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# Rules and Regulations

Federal Register

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Wednesday, December 6, 2000

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Parts 773 and 774

**RIN 0560–AG23**

## Implementation of the Special Apple Loan Program and Emergency Loan for Seed Producers Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action is being taken to implement provisions of the Agricultural Risk Protection Act of 2000 (Act). The intended effect is to assist producers of apples suffering economic loss as a result of low prices and by making low cost loans available to seed producers adversely affected by the bankruptcy filing of AgriBiotech.

**DATES:** Effective December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Elzinga, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–3889; facsimile (202) 690–1117; electronic mail: *pelzinga@wdc.usda.gov;* and Orlando C. Kilcrease, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–1472; facsimile: 202–720–6797; electronic mail: *Orlando Kilcrease@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Notice and Comment

Section 263 of the Agricultural Risk Protection Act requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) related to notices of proposed rulemaking and public participation in the rulemaking process. This rule is thus issued as final and is effective immediately.

### Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

### Regulatory Flexibility Act

The Farm Service Agency (Agency) certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, as amended (5 U.S.C. 601). This rule does not impact the small entities to a greater extent than the large entities.

### Environmental Evaluation

### National Environmental Policy Act

The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (42 U.S.C. 4321 et seq.) neither an Environmental Impact Statement nor an environmental assessment is required.

### Environmental Justice, Executive Order 12898

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

### Executive Order 12988

The rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. In accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR part 11 must be exhausted.

### 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).

### Unfunded Mandates

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. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

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

### Paperwork Reduction Act

Section 263 of the Act provides that this rule will be promulgated without regard to the Paperwork Reduction Act contained in chapter 35 of title 44, United States Code. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

### Background

This rule will implement sections § 203(f) and 253 of the Act (Pub. L. 106–224) enacted June 20, 2000, related to the Special Apple Loan Program and

Emergency Loan for Seed Producers Program, respectively.

*1. 7 CFR Part 773—Special Apple Loan Program*

Apple prices in the 1998–1999 growing season fell to their lowest levels in nearly 10 years. The average U.S. 1998–1999 farm price for fresh market apples was estimated to be down more than 20 percent from the previous growing season, resulting in a 16 percent drop in total farm revenue. Even with a possible improvement in the coming growing seasons, the serious economic impact of the earlier economic losses will result in ongoing financial difficulties for apple producers.

Section 203(f) of the Act directed the Secretary to make loans to producers of apples that are suffering economic loss as a result of low prices for apples. To ensure that the borrowers under this program are those that most likely are suffering economic loss, the Agency restricted applicants to those that produced apples, on not less than 10 acres, for sale in 1999 or 2000. This restriction excludes hobby apple producers. Funds allocated will most effectively assist those most directly affected by the economic crisis in the apple industry since those eligible will have been dependent on apple production for a primary source of income. In addition, this program is intended to assist producers recover from economic losses and enable them to continue their farming operations. Therefore, loan funds must be used for specified purposes related to the production and marketing of apples. Distribution of funds has been determined to be on a per acre basis to provide the most equitable access to assistance for all affected producers, and to best meet the intent of the authorizing statute.

Congress allocated a limited amount of funds for this program so certain limits are necessary to help ensure that loan funds are distributed equitably to all interested producers. In addition, this program is intended to assist producers through a period of low apple prices, not replace the producers' established sources of credit. For these reasons, the regulation limits loan size to a maximum of $300.00 per acre of apples in production and a maximum indebtedness of $500,000 per producer. To expedite funding of eligible requests, the Agency will waive the application requirements of historical production and financial information, and cash flow projections, for applicants requesting $30,000 or less. The Agency, however, will require these applicants to provide cash flow projections later to show repayment if their balance sheet shows a net worth of less than three times the loan amount. This additional documentation is needed to minimize the credit risk to the Government. For loans for more than $30,000, repayment will always be based on the applicant's projected cash flow budget.

To minimize the credit risk to the Government, the Agency requires that the applicants have an acceptable credit history and demonstrate an ability to repay the proposed loan. The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B), or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). The restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided the Agency false or misleading information are also not eligible for this program.

The Agency has established rates, terms, and collateral requirements for Special Apple Loans to allow for maximum flexibility. The Act allows the Agency to require collateral in an amount adequate to protect the Government's interest and to minimize potential loss. The Agency therefore, will take a lien on available assets as necessary to adequately secure the loan. The level of documentation of collateral value will depend on the risk of loss, as determined by a review of the applicant's financial condition, and the size of the loan. For loans over $30,000, applicants with net worth of at least three times the loan amount have demonstrated an ability to successfully manage the finances of their operation and have accumulated assets to protect against adverse conditions. Applicants with those characteristics generally represent significantly less potential loss, so Agency will place less emphasis on collateral when evaluating the soundness of the loan request. Therefore, these applicants will be allowed to provide documentation of collateral value in the form of assessments or depreciation schedules. For loans over $30,000, applicants with net worth of less than three times the loan amount will be required to provide current appraisals, at the applicant's expense, to document collateral values. All appraisals must be completed by a knowledgeable appraiser, acceptable to the Agency. Real estate appraisals must be prepared by a state certified general appraiser in compliance with the Uniform Standards of Professional Appraisal Practices (USPAP). For loans of $30,000 or less, collateral value will be based on the best available, verifiable information. In addition, debtors will be subject to the collection authorities of 31 U.S.C. chapter 37.

All persons approved for such loan assistance must execute loan instruments and legal documents to secure the loan and reduce the risk to the Government. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize the credit risk.

The Agency will service Special Apple Loans like nonprogram loans under 7 CFR part 1951, subpart J. These borrowers have not been required at loan origination to meet the more stringent eligibility requirements of Agency loans under the Consolidated Farm and Rural Development Act (CONACT), and the Act does not provide CONACT servicing benefits to Special Apple Loan program borrowers.

*2. 7 CFR Part 774—Emergency Loans for Seed Producers Program*

Seed producers have suffered economic hardships as a result of the bankruptcy filing of AgriBiotech. AgriBiotech, one of the largest single turf, forage, and alfalfa seed companies in the country, filed for protection under chapter 11 of the bankruptcy code affecting over 1,200 farmer growers in 39 States. The growers are the largest segment of creditors in the bankruptcy proceedings. AgriBiotech cannot pay these growers for their 1999 produced crop as a result of the bankruptcy filing. The courts have estimated the total value of seed growers' claims to be approximately $50 million.

Section 253 of the Act directed the Secretary to make no-interest loans to producers of the 1999 crop of grass, forage, vegetable, or sorghum seed that have not received payments for the seed as a result of bankruptcy proceedings involving AgriBiotech. The funds allocated for the program are believed to be adequate for all eligible producers. If demand does exceed the allocation, funds will be paid in order of application approval. For the producer to be eligible, the seed producer must have a valid claim in the bankruptcy proceeding arising from a contract to grow seeds in the United States.

The Agency has established terms and collateral requirements for Emergency Loans for Seed Producers to allow for maximum flexibility. The Agency will take as security an assignment on the bankruptcy claim, and any seed still held in the applicant's possession, as provided by the Act to secure loans made to producers under this program. The Agency will obtain a balance sheet

and any other financial information needed to determine if there are liens impacting the collateral. In addition, debtors will be subject to the debt collection authorities of 31 U.S.C. chapter 37. For example, in cases of default, the Agency may seek to attach additional assets by filing judgments or refer the debt to the Department of Treasury for offset and cross-servicing. In light of the Government's limited exposure on these small loans and desire for simple administration, the Agency believes that no further security requirements are needed.

The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B) or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). These restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided false or misleading information also are not eligible for this program. The above restrictions are needed to minimize credit risk and comply with statutory requirements.

All persons approved for such loan assistance must execute the Agency's loan instruments and legal documents. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize risk and protect the Government's interest should default occur.

In accordance with § 253 of the Act, the loan interest rate for Emergency Loans for Seed Producers will be zero initially. Upon completion and disbursal of the estate in bankruptcy or 18 months after the date of the note, whichever comes first, the note will convert any outstanding balance to the then current Farm Operating loan-direct interest rate over an additional 7 years. Interest rates are specified in exhibit B of Agency Instruction 440.1 (available in any Agency office) by loan type. If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with existing Agency regulations (7 CFR part 1951, subpart J, Management and Collection of Nonprogram Loans, specifically § 1951.468). The loan will be serviced as a nonprogram loan because the program is not authorized by the CONACT and, therefore, does not receive the benefits of CONACT program loans. The borrowers also have not been required to meet the more stringent CONACT requirements.

Section 263 of the Act directed the Secretary to implement this program as soon as practicable and without regard to the notice and comment provisions of section 553 of title 5, United States Code and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, relating to notices of proposed rulemaking and public participation in rulemaking. Publication of this rule for immediate effect without prior notice and comment as a final rule, therefore, is warranted.

**List of Subjects**

*7 CFR Part 773*

Fruits, Loan programs-agriculture.

*7 CFR Part 774*

Seeds, Loan programs-agriculture.

For reasons set out in the preamble, 7 CFR chapter VII is amended as set forth below.

1. Part 773 is added to read as follows:

## PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

773.1 Introduction.
773.2 Definitions.
773.3 Appeals.
773.4–773.5 [Reserved]
773.6 Eligibility requirements.
773.7 Loan uses.
773.8 Limitations.
773.9 Environmental compliance.
773.10 Other Federal, State, and local requirements.
773.11–773.17 [Reserved]
773.18 Loan application.
773.19 Interest rate, terms, security requirements, and repayment.
773.20 Funding applications.
773.21 Loan decision, closing and fees.
773.22 Loan servicing.
773.23 Exception.

**Authority:** Pub. L. 106–224.

### § 773.1 Introduction.

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

### § 773.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Apple producer* is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

*Security* is real or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

*USPAP* is Uniform Standards of Professional Appraisal Practice.

### § 773.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

### §§ 773.4–773.5 [Reserved]

### § 773.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible for a Special Apple Program Loan:

(a) The loan applicant must be an apple producer;

(b) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(c) The loan applicant and anyone who will execute the promissory note

must possess the legal capacity to enter into contracts, including debt instruments;

(d) At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(e) At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(f) The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information; and

(g) The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

**§ 773.7 Loan uses.**

Loan funds may be used for any of the following purposes related to the production or marketing of apples:

(a) Payment of costs associated with reorganizing a farm to improve its profitability;

(b) Payment of annual farm operating expenses;

(c) Purchase of farm equipment or fixtures;

(d) Acquiring, enlarging, or leasing a farm;

(e) Making capital improvements to a farm;

(f) Refinancing indebtedness;

(g) Purchase of cooperative stock for credit, production, processing or marketing purposes; or

(h) Payment of loan closing costs.

**§ 773.8 Limitations.**

(a) The maximum loan amount any individual or business entity may receive under the Special Apple Loan Program is limited to $500,000.

(b) The maximum loan is further limited to $300 per acre of apple trees in production in 1999 or 2000, whichever is greater.

(c) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(d) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

**§ 773.9 Environmental compliance.**

(a) Except as otherwise specified in this section, prior to approval of any loan, an environmental evaluation will be completed by the Agency to determine if the proposed action will have any adverse impacts on the human environment and cultural resources. Loan applicants will provide all information necessary for the Agency to make its evaluation.

(b) The following loan actions were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. Therefore the following loan actions are categorically excluded from the requirements of an environmental evaluation:

(1) Payment of legal costs associated with reorganizing a farm to improve its profitability as long as there will be no changes in the land's use or character;

(2) Purchase of farm equipment which will not be affixed to a permanent mount or position;

(3) Acquiring or leasing a farm;

(4) Refinancing an indebtedness not greater than $30,000;

(5) Purchase of stock in a credit association or in a cooperative which deals with the production, processing or marketing of apples; and

(6) Payment of loan closing costs.

(c) The loan actions listed in paragraph (b) of this section were also reviewed in accordance with section 106 of the National Historic Preservation Act (NHPA). It was determined that these loan actions are non-undertakings with no potential to affect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.

(d) If adverse environmental impacts, either direct or indirect, are identified, the Agency will complete an environmental assessment in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(e) In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.

(1) The Agency will not accept real estate as collateral which has significant environmental risks.

(2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.

**§ 773.10 Other Federal, State, and local requirements.**

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

**§§ 773.11–773.17 [Reserved]**

**§ 773.18 Loan application.**

(a) A complete application will consist of the following:

(1) A completed Agency application form;

(2) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(3) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(4) A balance sheet on the applicant;

(5) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(6) The last 3 years of production and income and expense information;

(7) Payment to the Agency for ordering a credit report; and

(8) Any additional information required by the Agency to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security.

(b) Except as required in § 773.19(e), the Agency will waive requirements for a complete application, listed in paragraphs (a)(5) and (a)(6) of this section, for requests of $30,000 or less.

**§ 773.19 Interest rate, terms, security requirements, and repayment.**

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The

rate will be established by the Agency and available in each Agency Office, based upon the cost of Government borrowing for loans of similar maturities.

(b) *Terms.* The loan term will be for up to 3 years, based upon the useful life of the security offered.

(c) *Security requirements.* The Agency will take a lien on the following security, if available, as necessary to adequately secure the loan:

(1) Real estate;

(2) Chattels;

(3) Crops;

(4) Other assets owned by the applicant; and

(5) Assets owned and pledged by a third party.

(d) *Documentation of security value.*

(1) For loans that are for $30,000 or less, collateral value will be based on the best available, verifiable information.

(2) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of three times the loan amount or greater, collateral value will be based on tax assessment of real estate and depreciation schedules of chattels, as applicable, less any existing liens.

(3) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of less than three times the loan amount, collateral value will be based on an appraisal. Such appraisals must be obtained by the applicant, at the applicant's expense and acceptable to the Agency. Appraisals of real estate must be completed in accordance with USPAP.

(e) *Repayment.* (1) All loan applicants must demonstrate that the loan can be repaid.

(2) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of three times the loan amount or greater, repayment ability will be considered adequate without further documentation.

(3) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of less than three times the loan amount, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding § 773.18 of this part.

(4) For loans that are for more than $30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

(f) *Creditworthiness.* All loan applicants must have an acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

### § 773.20 Funding applications.

Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

### § 773.21 Loan decision, closing, and fees.

(a) *Loan decision.* (1) The Agency will approve a loan if it determines that:

(i) The loan can be repaid;

(ii) The proposed use of loan funds is authorized;

(iii) The applicant has been determined eligible;

(iv) All security requirements have been, or will be met at closing;

(vi) All other pertinent requirements have been, or will be met at closing.

(2) The Agency will place conditions upon loan approval as necessary to protect its interest.

(b) *Loan closing.* (1) The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing;

(2) There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved; and

(2) The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

### § 773.22 Loan servicing.

Loans will be serviced in accordance with subpart J of part 1951, or its successor regulation, during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with § 1951.468 of that part.

### § 773.23 Exception.

The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

2. Part 774 is added to read as follows:

## PART 774—Emergency Loan for Seed Producers Program

Sec.

774.1 Introduction.
774.2 Definitions.
774.3 Appeals.
774.4–774.5 [Reserved]
774.6 Eligibility requirements.
774.7 [Reserved]
774.8 Limitations.
774.9 Environmental requirements.
774.10 Other Federal, State, and local requirements.
774.11–774.16 [Reserved]
774.17 Loan application.
774.18 Interest rate, terms, and security requirements.
774.19 Processing applications.
774.20 Funding applications.
774.21 [Reserved]
774.22 Loan closing.
774.23 Loan servicing.
774.24 Exception.

**Authority:** Pub. L. 106–224

### § 774.1 Introduction.

The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.

### § 774.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority

of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

*Seed producer* is a farmer that produced a 1999 crop of grass, forage, vegetable, or sorghum seed for sale to AgriBiotech under contract.

**§ 774.3 Appeals.**

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

**§§ 774.4–774.5 [Reserved]**

**§ 774.6 Eligibility requirements.**

Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program;

(a) The loan applicant must be a seed producer;

(b) The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from acontract to grow seeds in the United States;

(c) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(d) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(e) At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(f) At loan closing, the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(g) The loan applicant, in past and current dealings with the Agency, must not have provided the Agency with false information.

**§ 774.7 [Reserved]**

**§ 774.8 Limitations.**

(a) The maximum loan amount any individual or business entity may receive will be 65% of the value of the timely filed proof of claim against AgriBiotech in the bankruptcy proceeding as determined by the Agency.

(b) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(c) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

**§ 774.9 Environmental requirements.**

The loan actions in this part were reviewed for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. These loan actions are categorically excluded from the requirements of an environmental evaluation due to the fact that the loan funds would be utilized to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.

**§ 774.10 Other Federal, State, and local requirements.**

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

**§ 774.11–774.16 [Reserved]**

**§ 774.17 Loan application.**

A complete application will consist of the following:

(a) A completed Agency application form;

(b) Proof of a bankruptcy claim in the AgriBiotech bankruptcy proceedings;

(c) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(d) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(e) A balance sheet on the applicant; and

(f) Any other additional information the Agency needs to determine the eligibility of the applicant and the application of any Federal, State or local laws.

**§ 774.18 Interest rate, terms and security requirements.**

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 18 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

(2) Thereafter interest will begin to accrue at the regular rate for an Agency Farm operating-direct loan (available in any Agency office).

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 18 months from the date of the note.

(2) However, any principal remaining thereafter will be amortized over a term of 7 years at the Farm operating-direct loan interest rate (available in any Agency office). If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with § 1951.468 of this title.

(c) *Security Requirements.* (1) The Agency will require a first position pledge and assignment of the applicant's monetary claim in the AgriBiotech bankruptcy estate to secure the loan.

(2) If the applicant has seed remaining in their possession that was produced under contract to AgriBiotech, the applicant also will provide the Agency with a first lien position on this seed. It is the responsibility of the applicant to negotiate with any existing lienholders to secure the Agency's first lien position.

**§ 774.19 Processing applications.**

Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending applications will be considered withdrawn.

**§ 774.20 Funding applications.**

Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.

**§ 774.21 [Reserved]**

**§ 774.22 Loan closing.**

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

**§ 774.23 Loan servicing.**

Loans will be serviced in accordance with subpart J of part 1951 of this title, or its successor regulation. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with section 1951.468 of that part.

**§ 774.24 Exception.**

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

Signed at Washington, D.C., on November 29, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 00–30977 Filed 12–5–00; 8:45 am]

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 208

**[INS Order No. 1865–97; AG Order No. 2340–2000]**

**RIN 1115–AE93**

## Asylum Procedures

**AGENCY:** Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Justice regulations implementing the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), governing asylum claims. Additionally, this rule amends portions of the regulations governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country. Finally, the rule identifies factors that may be considered in the exercise of discretion in asylum cases in which the alien has established past persecution but may not have a well-founded fear of future persecution. This final rule will ensure that asylum applications are processed in accordance with the Immigration and Nationality Act (Act), as amended by IIRIRA, as well as with international instruments.

**DATES:** This rule is effective January 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** *For matters relating to the Immigration and Naturalization Service*—Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO third floor, Washington, DC 20536, telephone (202) 305–2663. *For matters relating to the Executive Office for Immigration Review*—Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Regulations To Implement the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

On March 6, 1997, the Service and EOIR jointly published in the **Federal Register**, at 62 FR 10312, an interim rule to implement Public Law 104–208 (110 Stat. 3546) (IIRIRA). That legislation significantly amended several parts of the Immigration and Nationality Act (''Act'' or ''INA''), including part 208. The interim regulations implementing IIRIRA were preceded by a notice of proposed rulemaking, published in the **Federal Register** on January 3, 1997, at 62 FR 444, and providing a 30-day comment period. The interim rule provided a 120-day comment period. The Department of Justice (Department) received 39 comments on the interim rule in addition to the 124 comments already received as a result of the proposed rule. This final rule reflects further changes resulting from comments received in response to both the original proposed rule and the interim rule.

*Proposed Rule Regarding Past Persecution, Internal Relocation, and Discretion (Past Persecution Rule)*

On June 11, 1998, at 63 FR 31945, the Service and EOIR jointly published in the **Federal Register** a proposed rule to change portions of 8 CFR 208.13 and 208.16 in order to provide further guidance on adjudicating asylum cases and withholding of removal cases when an applicant has established past persecution and when the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. The rule proposed to establish new guidelines concerning the Attorney General's exercise of discretion in cases in which past persecution is established, and the types of evidence that may be considered in determining whether an applicant has a well-founded fear of future persecution. Additionally, the rule proposed to identify new factors that could be considered in the determination whether to grant asylum when an applicant has established past persecution but no longer has a well-founded fear of future persecution. The Department received 35 comments on the proposed past persecution rule.

The Department has elected to split part 208 from the rest of the IIRIRA interim regulations and to incorporate amendments to part 208 into this final rule based both on comments to the IIRIRA interim rule and on comments to the June 1998 proposed rule regarding past persecution. In the future, the Department will publish a proposed rule concerning the definition of ''persecution'' and the definition of ''particular social group.'' Those new proposals are based in part on certain of the provisions being made final in this rule.

### II. Comments

Most of the commenters on both the interim IIRIRA rule and proposed past persecution rule represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. The Department also received comments from individual attorneys and the regional representative of United Nations High Commissioner for Refugees (UNHCR). Since many of the comments were duplicative or endorsed the submissions of other commenters, the Department will address the comments by section and topic, rather than reference each comment and commenter. The following discussion

also identifies amendments made by the Department to clarify and streamline the regulations as part of the Administration's reinvention and regulation streamlining initiative.

*§ 208.2—Jurisdiction*

To clarify jurisdiction over asylum applications, the Department has reorganized and revised this section as follows:

(1) Language has been added to § 208.2(a) to establish that the Office of International Affairs has initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(2) Language in § 208.2(a) relating to the filing of a complete application has been removed as redundant with the provisions of § 208.3.

(3) Section 208.2(b)(3) has been redesignated as § 208.2(b) to provide a general description of Immigration Court jurisdiction, relevant to the majority of asylum applications adjudicated in Immigration Court, prior to discussion of the more limited jurisdiction applicable in circumstances described in new § 208.2(c).

(4) The first sentence in new § 208.2(b) (formerly § 208.2(b)(3)), which refers to an immigration judge's jurisdiction over asylum applications ''after a copy of the charging document has been filed with the Immigration Court,'' has been amended. The Department has removed the words ''a copy of'' from that sentence because, in general, only the charging document with the original signature of the Service officer who issued the charging document may be filed with the Immigration Court. The Department also amended the last sentence in § 208.2(b) to establish that immigration judges have exclusive jurisdiction over credible fear determinations that have been referred to the Immigration Court pursuant to § 208.30, as well as reasonable fear determinations that have been referred to the Immigration Court pursuant to § 208.31. In addition, the reference to ''Executive Office for Immigration Review'' has been replaced with ''Immigration Court'' because only immigration judges have jurisdiction over credible fear and reasonable fear review proceedings.

(5) Section 208.2(b)(1) has been redesignated as § 208.2(c), governing asylum and withholding proceedings for those aliens not entitled to removal proceedings under section 240 of the Act. Section 208.2(c)(1) relates to aliens who are not entitled to proceedings under section 240 of the Act and are eligible to apply only for asylum and withholding of removal. Section 208.2(c)(2) relates to jurisdiction over proceedings that are limited to requests for withholding of removal pursuant to § 208.31, after an alien subject to reinstatement of a prior order under section 241(a)(5) of the Act or administrative removal under section 238(b) of the Act has been found to have a reasonable fear.

(6) The Department has rewritten the language of § 208.2(c)(1)(v) (formerly § 208.2(b)(1)(v)), to clarify the existing rules relating to cases falling under section 235(c) of the Act. Section 235(c) provides an expedited removal process for certain aliens who are suspected of being inadmissible on national security grounds; the Service has the authority to order such an alien removed without further inquiry or hearing by an immigration judge, as provided in § 235.8 of this chapter.

The current regulatory scheme provides adequate safeguards to ensure that the expedited nature of removal under section 235(c) is balanced against the right to apply for asylum in appropriate cases. An immigration officer or immigration judge must initiate certain procedures described in 8 CFR 235.8 when an arriving alien is suspected of being inadmissible on security or related grounds. Only after those procedures have been completed and a permanent order of inadmissibility is issued would the question arise regarding eligibility for asylum or withholding of removal. Although some categories of persons found inadmissible on those grounds are ineligible for asylum, other persons, such as those found inadmissible based on membership in a terrorist organization, remain eligible for asylum.

The Regional Director is authorized to pretermit an asylum application for aliens who have been issued a permanent order of inadmissibility. However, in some cases, and in the exercise of prosecutorial discretion, the Regional Director may choose to place persons found subject to removal under section 235(c) of the Act, but who are not subject to the bars to asylum, in asylum-only proceedings under § 208.2(c)(1) by issuing a Form I–863, Notice of Referral to Immigration Judge. In those cases in which the Service has affirmatively decided to place an alien in asylum-only proceedings and has issued a Form I–863, the immigration judge would then have jurisdiction to hear the alien's asylum application. Of course, unless the Service has issued a Form I–863 to an alien who is found to be removable under section 235(c) of the Act, the immigration judges have no jurisdiction with respect to those cases.

The Department further notes that § 235.8 of this chapter, as amended by the regulations implementing the Convention Against Torture, expressly limits the applicability of § 208.2. Section 235.8(b)(4) specifically states that persons seeking withholding under section 241(b)(3) of the Act or the Convention Against Torture are not subject to the ''provisions of part 208 of this chapter relating to consideration or review by an immigration judge, the Board of Immigration Appeals or an asylum officer.'' Instead, it is the Service's responsibility to ensure that no removals are conducted under section 235(c) that violate our international obligations; the process for making such a determination remains within the Service's control.

(7) Section 208.2(c)(1)(vi) [formerly section 208.2(b)(1)(vi)] has been amended to clarify that the exclusive jurisdiction of the immigration judge comes into effect only when the district director refers an alien described in this provision for a hearing that is limited to asylum and withholding of removals.

(8) In § 208.2(c)(3)(i) (formerly § 208.2(b)(2)(i)), which describes rules of procedures, the reference to ''8 CFR part 240'' in the first sentence has been amended to read ''8 CFR part 240, subpart A,'' to clarify that hearings limited to eligibility for asylum and/or withholding of removal shall be conducted under the same procedures that apply in removal proceedings.

(9) Section § 208.2(b)(2)(ii) has been redesignated as § 208.2(c)(3)(ii), but otherwise is unchanged.

(10) Section 208.2(b)(2)(iii) has been redesignated as § 208.2(c)(3)(iii). Additionally, it has been amended by removing reference to sections 208, 212(h), 212(i) of the Act and by adding an exception based on a showing of exceptional circumstances, in order to reflect the statutory language in section 240(b)(7) of the Act.

*§ 208.3—Form of Application*

The name of the Form I–589, Application for Asylum and Withholding of Removal, as it appeared in § 208.3(a) has been corrected to ''Form I–589, Application for Asylum and for Withholding of Removal.'' Section 208.3(c)(4) has been corrected to reflect that section 274C of the Act provides for criminal as well as civil penalties for knowingly placing false information on an Application.

*§ 208.4—Filing the Application*

A considerable number of comments were received regarding the 1-year filing deadline contained in section 208(a)(2)(B) of the Act and the

provisions for exemption contained in section 208(a)(2)(D) of the Act relating to changed conditions.

Some commenters took issue with the deadline itself. While the Department understands the concerns of those commenters, the 1-year filing deadline is a statutory requirement and therefore cannot be removed by rulemaking.

Some commenters suggested that an asylum officer or immigration judge should question an applicant before an application can be rejected as untimely filed. This suggestion has been adopted for two reasons. First, the decision on a tardy filing issue can best be made only after an asylum officer, in an interview, or immigration judge, in a hearing, has given an applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing. Second, for applicants who are placed in removal proceedings, the immigration judge must still determine whether the applicant is eligible for withholding of removal, even if it is found that the alien is ineligible to apply for asylum.

Language in § 208.4(a)(2)(ii) was added for consistency with § 1.1(h), which defines the term ''day'' for computing the period of time for taking action provided in 8 CFR. When calculating the one-year period when the last day of the period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. One commenter suggested that the Department consider the filing of an asylum application to be the date the application is mailed or otherwise sent to the Service or Immigration Court. This suggestion has been adopted in part. For an application filed with the Service, an application is considered to have been filed on the date it is received by the Service. In a case in which the 1-year filing deadline has not been met, however, if the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For a case before the Immigration Court or the Board of Immigration Appeals (Board), an asylum application is considered to have been filed on the date it is received by the Court or the Board.

In addition, other references to filing an application in paragraph (a) relating to ''submission of,'' ''submitted,'' or ''applied for'' have also been changed to ''filed'' in order to make language in the section consistent. Language was also added to reflect that the provisions of this section apply to asylum applications decided by an asylum officer, an immigration judge, or the Board.

Many commenters recommended a change in the language of § 208.4(a)(4) and § 208.4(a)(5) that would indicate the list of circumstances is not all-inclusive. That suggestion has been adopted.

The Department agreed with several of the recommended amendments to § 208.4(a)(4), relating to changed circumstances. First, the Department eliminated the requirement that the changed circumstances be ''objective.'' The modifier ''objective'' was removed to avoid confusion in cases where, for example, the changed circumstance relates to a subjective choice an applicant has made, such as a religious conversion or adoption of political views. Additionally, the Department eliminated the requirement that the changed circumstances occur within the United States, because there may be situations in which the changed circumstances, such as religious conversion, took place outside the United States, but not in the applicant's home country. The Department also specified that cessation of the requisite relationship between a principal applicant and a dependent after the dependent has been included in the principal applicant's application as a derivative applicant may constitute a changed circumstance. Finally, the Department clarified that an adjudicator must take into account an applicant's delayed awareness of a changed circumstance, such as events in the home country, when determining whether a period of delay is reasonable.

Section 208.4(a)(5), relating to extraordinary circumstances, has been revised to reflect the numerous comments regarding the current list of circumstances that may constitute extraordinary circumstances. The Department has added additional circumstances to the non-exhaustive list, as discussed below. Additionally, the Department has changed the word ''shall'' in the second sentence of paragraph (a)(5) to ''may'' to better reflect the statutory language in section 208(a)(2)(D) and to reinforce the necessity of analyzing each case on an individual basis. The Department has also added language to the burden of proof requirement to specify clearly that the applicant bears the burden to demonstrate that the delay was reasonable under the circumstances.

With respect to § 208.4(a)(5), some commenters suggested that extraordinary circumstances not be limited to factors beyond the alien's control. That suggestion has been partially adopted. While it is hard to imagine a situation that both would be entirely within the alien's control and would also prevent him or her from filing the application, it is not difficult to imagine qualifying situations in which the alien might be forced to choose between the lesser of two evils, or the alien might be able to exercise a limited amount of control. The regulation has been amended to provide that the alien must not have intentionally created the circumstance.

Additionally, the phrase ''but for those circumstances he or she would have been able to file the application within the 1-year period'' has been modified to ensure consistency with the statutory language to read ''those circumstances were directly related to the alien's failure to file the application within the 1-year period.''

In § 208.4(a)(5)(i), the phrase ''of significant duration,'' in reference to an experience of serious illness or disability, was removed to allow for a situation in which the timing of an applicant's serious illness or disability prohibited him or her from filing the asylum application within one year of the individual's arrival in the United States, even though the illness or disability was of short duration.

Several commenters recommended that the list of extraordinary circumstances be expanded to include maintaining valid immigrant or nonimmigrant status, in addition to maintaining Temporary Protected Status. The Department has accepted the recommendation because there are sound policy reasons to permit persons who were in a valid immigrant or nonimmigrant status, or were given parole, to apply for asylum within a reasonable time after termination of parole or immigration status. The Department does not wish to force a premature application for asylum in cases in which an individual believes circumstances in his country may improve, thus permitting him to return to his country. For example, an individual admitted as a student who expects that the political situation in her country may soon change for the better as a result of recent elections may wish to refrain from applying for asylum until absolutely necessary. The Department would expect a person in that situation to apply for asylum, should conditions not improve, within a very short period of time after the expiration of her status. Failure to apply within a reasonable time after expiration of the status would foreclose the person from meeting the statutory filing requirements. Generally, the Department expects an asylum-seeker to apply as soon as possible after expiration of his or her valid status, and failure to do so will result in rejection

of the asylum application. Clearly, waiting six months or longer after expiration or termination of status would not be considered reasonable. Shorter periods of time would be considered on a case-by-case basis, with the decision-maker taking into account the totality of the circumstances.

Others recommended including situations involving the death or serious illness or incapacity of the applicant's legal representative or of a member of the applicant's immediate family. The Department agrees that there may be situations in which the serious illness of an applicant's representative or family member could relate to an applicant's delay in applying for asylum. Therefore, that suggestion has been adopted. As with all exceptions to the 1-year filing requirement based on extraordinary circumstances, the applicant would have to demonstrate that the illness of the representative or family related to the delay in filing and that the applicant applied for asylum within a reasonable amount of time after the illness.

Some commenters suggested broadening the two illustrative lists. The lists have been expanded to include some, but not all, of the suggestions. The Department's decision to include only some of the circumstances suggested in the comments does not mean that the Department has determined that those that were not included could never excuse tardiness. The fact that an applicant's circumstances are described in the list of possible changed or extraordinary circumstances does not in itself mandate that a tardy filing be excused; nor does the lack of such a description mean that the circumstances cannot be raised during an interview or hearing and result in excuse of the untimely filing. The lists merely provide examples of circumstances that might result in a tardiness being excused. In order for a tardy filing to be excused, an applicant must first credibly show the existence or occurrence of the circumstances (regardless of whether those circumstances are specifically listed in the regulations), and then show (1) for changed circumstances, that those changes materially affect the alien's eligibility for asylum, or (2) for extraordinary circumstances, that those circumstances directly relate to the alien's failure to file the application within the 1-year deadline. Without the direct connection, the alien is statutorily ineligible to apply for asylum.

The Department notes that the existing provision in this section relating to ''ineffective assistance of counsel'' raises questions that have arisen under the Act more generally concerning whether, and if so when, errors by counsel may furnish a ground for an alien to obtain relief, such as setting aside a final order or excusing a failure to comply with a statutory deadline. For example, in a case that is currently pending before the Board of Immigration Appeals, the Service is arguing that because there is no constitutional right to government-furnished counsel in immigration proceedings, there is, under *Coleman v. Thompson,* 501 U.S. 722 (1991), no constitutional basis for relief based on a claim of ineffective assistance of counsel. Similar issues concerning errors of counsel have been raised in court in other contexts under the Act. The Department accordingly is re-examining the ineffective-assistance-of-counsel provision in the asylum regulations as part of a broader assessment of the role that counsel error may play in requests for relief in immigration proceedings. However, because those issues have not yet been raised in the context of the current rulemaking proceedings, this provision is being carried forward unchanged at the present time. The Department will address those issues separately in the future.

Certain commenters appeared to be confused about the amount of additional time an applicant should receive in order to file an application when it has been determined that a changed or extraordinary circumstance is present in a particular case. While most understood that the finding of changed or extraordinary circumstances justifies the tardiness being excused to the extent necessary to allow the alien a reasonable amount of time to submit the application, some believed that the alien would automatically receive one year from the date of the circumstance involved to file a timely application. Although there may be some rare cases in which a delay of one year or more may be justified because of particular circumstances, in most cases such a delay would not be justified. Allowing an automatic one year extension from the date a changed or extraordinary circumstance occurred would clearly exceed the statutory intent that the delay be related to the circumstance. Accordingly, that approach has not been adopted.

Section 208.4(b)(2) has been clarified to reflect that the director of the local asylum office, in addition to the director of the asylum program, can authorize the filing of an application directly with a local asylum office instead of with a Service Center. A provision was also added to this section that allows an application to be filed directly with an asylum office in a case in which an individual who was previously included in a principal applicant's asylum application as a dependent has lost derivative status and wants to file as a principal applicant.

The title of § 208.4(b)(3) has been changed from ''With the immigration judge'' to ''With the Immigration Court,'' and in § 208.4(b)(3)(i), the phrase ''jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document'' has been changed to ''jurisdiction over the underlying proceeding.'' The form number of the Notice of Referral to Immigration Judge (I–863) has also been added to § 208.4(b)(3)(iii).

Finally, the second sentence of § 208.4(b)(5) has been amended to reflect that submission of an asylum application to the district director does not automatically trigger the issuance of a Form I–863, Notice of Referral to an Immigration Judge.

*§ 208.5—Special Duties Towards Aliens in Custody of the Service*

Language was added to reflect that paragraph (a), which relates to aliens in the custody of the Service who request asylum or withholding of removal, or who express a fear of persecution or harm, does not pertain to an alien in custody pending a reasonable fear determination pursuant to § 208.31, just as it does not pertain to an alien pending a credible fear determination. However, a sentence was added to reflect that, even though the Service is not required to provide application forms to aliens pending a credible fear or reasonable fear determination, the Service may provide the forms upon request. The word ''persecution'' was deleted after the terms ''credible fear'' and ''reasonable fear'' to reflect that a credible fear or reasonable fear determination involves an evaluation of both fear of persecution and fear of torture. Finally, § 208.5(b)(1)(ii) has been amended to allow a district director to extend the 10-day filing period for crewmen when good cause exists.

*§ 208.6—Disclosure to Third Parties*

One commenter suggested the restoration of the second sentence in § 208.6(a), which had been removed as superfluous, relating to the deletion of identifying details from copies of asylum cases in public reading rooms. The Department believes § 208.6 protects the confidentiality of asylum applicants in public reading rooms and, therefore, has decided not to restore the removed language to this section. The Department has added language to

§ 208.6 regarding the disclosure to third parties of information and records relating to credible fear interviews and determinations, as well as reasonable fear interviews and determinations, to protect claimants' confidentiality in those proceedings.

The Department is considering further amendments to the confidentiality provisions and will publish a proposed rule if it decides further change is necessary.

*§ 208.7—Employment Authorization*

One commenter suggested a clarification that an asylum office referral of an asylum application to an immigration judge does not stop the 150-day employment authorization clock. This suggestion has not been adopted because it is not entirely accurate. Although the 150-day clock continues to run even if an asylum application is referred to the Immigration Court, an applicant may cause a delay that could stop the clock, including failing to appear at a hearing before the Immigration Court, or failing to follow fingerprinting requirements. Accordingly, this section has not been changed.

*§ 208.9—Procedure for Interview Before an Asylum Officer*

This section has not been substantively changed, although several comments were received. The reference to § 208.14(b) in paragraph (d) of this section was amended to refer to § 208.14(c) for consistency with revisions to § 208.14.

One commenter suggested that the regulations should contain protections to ensure the non-adversarial nature of the asylum interview and further commented that, because § 208.9(b) states that interviews will be conducted separate and apart from the public except at the request of the applicant, the asylum applicant, not the asylum officer, has the right to determine the number of individuals who may be present during an asylum interview. The Department believes that the regulations contain sufficient guidelines regarding the nonadversarial nature of the interview and has not amended them. The asylum officer needs to retain control over the flow and parameters of the interview, and the Department believes it is appropriate for asylum officers, taking into account the applicant's right to bring a representative and to present witnesses, and his or her need for an interpreter, to determine the number of individuals who may be present at the interview. Individual problems that may arise are more appropriately addressed by raising them with local asylum office directors than through regulatory changes.

The same commenter suggested that the asylum interview should be taped for accurate preservation of the record. While the Department has carefully considered that comment, and the Service does not rule out adopting a policy to tape record interviews in the future, at the present time the Department will not adopt that suggestion. In order to benefit the process, the taping would have to be transcribed for inclusion in the record. That would increase the cost, time, and personnel resources required to adjudicate an asylum application in a system that was designed to have an initial nonadversarial hearing with an asylum officer, followed, if the case is referred, by a *de novo*, more formal adversarial hearing, which is recorded, before an immigration judge. The Service believes that, in light of current circumstances, the administrative cost and burden of tape recording asylum interviews outweigh any expected benefit from the recording of interviews. As previously stated, however, the Service does not rule the option out for the future.

The same commenter also suggested that the Department should secure interpreters for asylum applicants who are interviewed at an asylum office. If the Department is unwilling to do so, the commenter continued, the Department should not penalize an applicant with an unexcused absence for failing to bring a qualified interpreter. The interim regulation provided an applicant a greater opportunity to find a qualified interpreter by permitting an applicant to provide an interpreter who is fluent in English and the applicant's native language, or any other language in which the applicant is fluent. The Service recognizes that Service-appointed interpreters could benefit applicants and the program. At this time, all federal agencies, including the Service, are reviewing issues relating to language interpreters in light of the recent Presidential Executive Order 13116, which directs federal agencies to establish written policies by December 11, 2000, on the language-accessibility of their programs and the programs of those who receive federal funds. The issue of interpreters raised by the commenter will therefore be addressed in compliance with Executive Order 13116.

The commenter's final suggestion was to incorporate into this part of the regulations guidelines for paroling detained asylum-seekers. The parole of aliens into the United States is within the purview of a district director and covered under § 212.5. The Department believes that § 212.5 contains sufficient guidelines to the Service for determining which aliens may be paroled, and has not included any guidelines for paroling aliens into this part.

Another commenter suggested that an applicant should be able to authorize counsel or a representative to pick-up a decision, without interruption of the 150-day clock. Section 239(a)(1) of the Act, however, specifically states that a Notice to Appear shall be given in person to the alien. The Act does not allow for a counsel or representative to accept service of a Notice to Appear unless the decision is mailed.

The same commenter suggested that § 208.9(d) should allow an attorney the opportunity to respond orally to any questions or evidence presented at the interview rather than allowing an asylum officer to require a representative to submit comments in writing. The current provisions in this section do allow for an attorney or representative to make an oral statement, and they also allow an asylum officer the discretion to have a representative submit comments in writing rather than orally, depending upon the particular facts in the case. Consistent with the current regulations, it is the general practice of asylum officers to allow an attorney the opportunity for oral responses and to ask questions at the end of the interview, subject to appropriate limitations. Therefore, the Department does not believe it necessary to make the suggested changes.

*§ 208.10—Failure To Appear at an Interview*

The Department received comments from one commenter on this section. The comments included a request for guidance on how an applicant can prove that the Service did not mail notice of interview to his or her address, and what constitutes ''exceptional circumstances.'' With regard to the latter, the commenter recommended that the term ''exceptional circumstances,'' which the commenter viewed as too harsh, be replaced with ''good cause.''

The Department declines to provide guidance on how to prove a notice of interview was not properly provided, and to further define ''exceptional circumstances'' beyond the definition provided in section 240(e)(1) of the Act. Determining whether a notice was properly provided and what constitutes ''exceptional circumstances'' must be reviewed on a case-by-case basis. That

approach allows an asylum office director the discretion to determine the type of evidence necessary to show that notice of interview was not properly given in a particular individual's case, and the types of circumstances that may be considered ''exceptional.'' In accordance with section 208(d)(5)(A)(v) of the Act, the Service must excuse the applicant's failure to appear for an interview for exceptional circumstances, but may excuse an applicant's failure to appear for good cause where appropriate. As a practical matter, the Service generally will exercise discretion to excuse a first-time failure to appear if (1) good cause has been shown, (2) proceedings before the Immigration Court have not been initiated, and (3) the excuse is received within a reasonable amount of time after the interview date. In the near future, the Service intends to issue a proposed rule clarifying the consequences of failure to appear, which will give the public further opportunity to comment on those issues.

*§ 208.12—Reliance on Information Compiled by Other Sources*

In response to one comment, paragraph (b) of this section was revised to clarify that a prohibition on discovery of information does not include requests for information made under the Freedom of Information Act (FOIA).

*§ 208.13—Establishing Asylum Eligibility*

Some commenters suggested that the former §§ 208.13(b)(2)(ii) and 208.16(b)(4) (giving due consideration to evidence that the government persecutes its nationals for unauthorized departure or seeking asylum) be reinstated in the regulations. This matter was thoroughly reviewed in the preamble to the interim rule at 62 FR 10312 in response to the earlier comments to the proposed rule at 62 FR 444. The comments to the interim rule raised no significant issues that were not previously addressed, and no changes have been made in that regard.

A new § 208.13(c)(2)(F) was added for consistency with the provisions of the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA). For applications for asylum filed prior to April 1, 1997, an applicant who falls within subclauses (I), (II), or (III) of section 212(a)(3)(B)(i) of the Act (relating to terrorist activity) is ineligible for a grant of asylum unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

Some commenters argued that language about discretionary denials of asylum in § 208.13(d) was inconsistent with section 208(a)(2)(A) of the Act, which provides for rejection of an asylum application when an alien may be removed pursuant to a bilateral or multilateral agreement to a safe third country. In drafting the interim rule, the Department had based its decision to include this regulatory provision on section 208(d)(5)(B) of the Act (which gives the Attorney General the authority to ''provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this Act'') and section 208(b)(2)(C) of the Act (which gives the Attorney General authority to establish limitations and conditions under which an alien may be found ineligible for asylum), not on section 208(a)(2)(A) of the Act. While the Department still finds that the regulatory provision would be fully in keeping with the Act, it has decided to remove it from the regulations to avoid confusion.

The Department notes that it has not issued a notice in the **Federal Register** announcing that the United States has entered into a bilateral or multilateral agreement permitting removal to a safe third country pursuant to section 208(a)(2)(A) of the Act. The Department indicated in the final rule at 59 FR 62284 its intent to notify the public in advance through a **Federal Register** publication should the United States enter into any such agreements.

Past Persecution Rule

This final rule also incorporates changes to this section and § 208.16 (withholding of removal) that were the subject of a proposed rule that was published in the **Federal Register** on June 11, 1998, at 63 FR 31945. In that rule, changes were proposed for adjudicating cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in his or her home country by relocating to another area of that country.

There were 35 comments submitted in response to the publication of the June 11, 1998, proposed rule. Twenty-six of the commenters argued that the proposal should be withdrawn and the effort to amend the regulation abandoned because the proposed changes violate the Act under which the Attorney General is given authority over the adjudication of applications for asylum and withholding of removal, and are inconsistent with precedent court decisions and international law. The other commenters were also opposed to virtually all the changes included in the proposed rule, but did not specifically request that the proposed rule be abandoned outright.

First, the Department does not agree with the argument that those regulatory changes are *ultra vires,* or beyond the authority granted to the Attorney General under the Act. Under section 208 of the Act, when an individual has established that he or she is a ''refugee,'' as defined in section 101(a)(42)(A) of the Act, the Attorney General is granted the discretion to determine which ''refugees'' will be granted asylum in the United States. Prior to enactment of IIRIRA, this broad delegation of power to the Attorney General over the adjudication of asylum applications withstood challenges to the Attorney General's authority to implement rules that denied asylum to persons who otherwise met the ''refugee'' definition for reasons other than those listed in the Act. *Komarenko* v. *INS,* 35 F.3d 432, 435–36 (9th Cir. 1994) (rejected challenge to the Attorney General's authority to issue a regulatory provision that denied asylum to refugees who were convicted of particularly serious crimes); *Yang v. INS,* 79 F.3d 932 (9th Cir.), *cert. denied,* 519 U.S. 824 (1996) (rejected challenge to the Attorney General's authority to deny asylum to refugees who were found to have been firmly resettled). Although the commenters correctly point out that section 208 of the Act was amended by IIRIRA to make several categories of individuals ineligible for asylum who had previously been barred only by regulation, section 208(b)(2)(C) of the Act specifically continues to give the Attorney General authority ''by regulation (to) establish additional limitations and conditions * * * under which an alien shall be ineligible for asylum.''

The Department has concluded that revisions to the regulatory language providing guidelines on the exercise of discretion in determining an applicant's eligibility for asylum, once he or she has been found to meet the definition of refugee based on past persecution, are justified and in line with the administrative and judicial precedents outlined in the Supplementary Information section to the proposed rule at 63 FR 31945. That includes, inter alia, consideration of the ability of an applicant who has been subjected to past persecution to relocate safely in his or her home country, a factor that has been recognized as appropriate for the Attorney General to consider in the exercise of her discretion to grant or deny asylum. *Harpinder Singh v. Ilchert,* 63 F.3d 1501, 1511 (9th Cir.

1995); *Surinder Singh v. Ilchert,* 69 F.3d 375, 379 (9th Cir. 1995). In addition, the Department has concluded that requiring consideration of the applicant's ability to relocate safely in his or her home country in determining whether the applicant has a well-founded fear of persecution is in line with the previous administrative and judicial decisions, such as *Matter of Acosta,* 19 I. & N. Dec. 211, 235 (BIA 1985), *modified on other grounds, Matter of Mogharrabi,* 19 I & N Dec. 439 (BIA 1987); *Etugh* v. *INS,* 921 F.2d 36, 39 (3rd Cir. 1990); *Quintanilla-Ticas* v. *INS,* 783 F.2d 955, 957 (9th Cir. 1986), outlined in the Supplementary Information section to the proposed rule.

The Department does agree, however, that some changes to the proposed language are appropriate in order to ensure that those provisions are applied in a manner that complies with our international obligations under the 1951 Convention relating to the Status of Refugees (''1951 Convention''), as modified by the 1967 Protocol relating to the Status of Refugees. In determining how to revise these provisions, the Department referred to the relevant provisions of the United Nations High Commissioner for Refugee's Handbook on Procedures and Criteria for Determining Refugee Status (''UNHCR Handbook''). Although the Department is not bound by the UNHCR Handbook, the handbook can serve as a ''useful interpretative aid,'' *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 427 (1999), and ''provides significant guidance in construing the Protocol, to which Congress sought to conform'' with the passage of the Refugee Act of 1980. *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 439 n.22 (1987). In §§ 208.13(b)(1)(i)(A) and 208.16(b)(1)(i)(A), the regulatory language for overcoming the presumption of a well-founded fear of persecution and a threat to the applicant's life or freedom because of past persecution is changed to state that the Service must show a ''fundamental change in circumstances'' in order to overcome the presumption. That phrase is consistent with Article 1 C(5) of the 1951 Convention, reflects the relevant language regarding the fundamental nature of the change at paragraph 135 of the UNHCR Handbook, and is also the exact language provided in section 208(c)(2)(A) of the Act concerning the termination of a refugee's grant of asylum in the United States. By adopting that language rather than that requiring a showing of changed country conditions to overcome the presumption, other changes in the circumstances surrounding the asylum claim, including a fundamental change in personal circumstances, may be considered, so long as those changes are fundamental in nature and go to the basis of the fear of persecution.

The amended language in §§ 208.13(b)(1) and 208.16(b)(1)(i) is not intended to alter the holding in the Board decision *Matter of N–M–A,* Int. Dec. 3368 (BIA 1998), that the presumption raised by a finding of past persecution applies only to a fear of future persecution based on the original persecution, and not to a fear of persecution from a new source unrelated to the past persecution. In *Matter of N–M–A,* the Board explained, ''once an applicant has demonstrated that he has suffered past persecution on account of a statutorily-protected ground, and the record reflects that country conditions have changed to such an extent that the applicant no longer has a well-founded fear of persecution from his original persecutors, the applicant bears the burden of demonstrating that he has a well-founded fear of persecution from any new source.'' While the amendments to §§ 208.13(b)(1) and 208.16(b)(1)(i) change the regulations to the extent that the presumption may be overcome by events other than a change in country conditions, the regulations retain and specify the requirement that the presumption relates only to fear of harm based on facts that give rise to the original persecution.

In the sections of the regulations dealing with the issue of internal relocation, §§ 208.13(b)(1)(i)(B) and (b)(2)(ii), and 208.16(b)(1)(i)(B) and (b)(2), the provisions have been revised to require a showing by the Service that ''under all the circumstances, it would be reasonable to expect the applicant to (relocate).'' That language is nearly identical to the language used in the relevant section of the UNHCR Handbook, paragraph 91. The reasonableness standard with regards to relocation is consistent with the general standard for adjudicating well-founded fear claims.

With regard to other sections of the proposed rule at 63 FR 31945, some commenters recommended that the language regarding the burden of proof to overcome the presumption that arises after a finding of past persecution should be revised to indicate clearly that the Service bears the burden to overcome those presumptions, by a preponderance of the evidence, even in the context of asylum adjudications by an asylum officer. The Department agrees, and changes have been made accordingly.

The Department declines to adopt the recommendation of many commenters to allow adjudicators to consider additional humanitarian factors, unrelated to the severity of the past persecution or other serious harm, in exercising their discretion to grant asylum to a refugee who no longer has a well-founded fear of persecution. In allowing an applicant to be granted asylum based on past persecution alone when it is determined that the applicant has established either (1) compelling reasons because of the severity of the past harm, or (2) a reasonable possibility that he or she may suffer serious harm upon removal to his or her home country, the Department is already providing avenues for relief that are consistent with the protection function of the 1951 Convention, and that go beyond the provisions of the UNHCR Handbook. *See* paragraph 136 of the UNHCR Handbook. As explained in the Supplementary Information to the proposed rule published in the **Federal Register** on June 11, 1998, at 63 FR 31945, 31947, by ''other serious harm,'' the Department means harm that is not inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but is so serious that it equals the severity of persecution. Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as ''other serious harm.''

In summary, the changes in the regulation are consistent with the Act, relevant case law, international instruments, and guidance in the UNHCR Handbook. The regulations leave intact the important principle that an applicant who has established past persecution on account of one of the five grounds is a refugee. It also continues to provide that a person who has established past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion shall be presumed to have a well-founded fear of future persecution on account of those same grounds, and shall also be presumed to have established a threat to his or her life or freedom under the standard for eligibility for withholding of removal. The regulations also make it clear that the Service has the burden of overcoming such presumptions by a preponderance of the evidence.

Finally, the Department has renamed paragraph (b) of § 208.13, currently ''persecution,'' to ''eligibility,'' to reflect the incorporation of the new paragraph (b)(3), regarding reasonableness of internal relocation, as well as the other eligibility requirements contained in paragraphs (b)(1) and (b)(2).

*§ 208.14—Approval, Denial, Referral, or Dismissal of Application*

This section has been substantially revised and reorganized to clarify the circumstances under which an asylum officer may grant, deny, or refer an asylum application. Because an asylum officer's authority to grant asylum to an applicant within the Asylum Office's jurisdiction is unrelated to an applicant's status, discussion of authority to grant asylum has been consolidated in § 208.14(b). The statutory requirement that identity checks be completed before asylum can be granted by an asylum officer has been added to paragraph (b).

Discussion of an asylum officer's authority to deny, dismiss, or refer an application has been placed in a new § 208.14(c), with a breakdown of how an application will be processed based on the applicant's status. In § 208.14(c)(1), language was added to clarify that applicants who are inadmissible or deportable will either be referred to the Immigration Court, or have their asylum applications dismissed. Section 208.14(c)(2) now clarifies that the classes of aliens to whom an asylum officer may grant or deny asylum status include aliens in valid Temporary Protected Status and immigrant status. New §§ 208.14(c)(3) and 208.14(c)(4) were added, and detail how the Service processes asylum applications of aliens who were paroled into the United States, depending upon the decision an asylum officer makes on the application and the validity of the parole.

*§ 208.15—Definition of ''firm resettlement''*

All of the references to ''he'' have been changed to ''he or she,'' and the references to ''nation'' have been changed to ''country.''

*§ 208.16—Withholding of Removal Under Section 241(b)(3)(B) of the Act and Withholding of Removal Under the Convention Against Torture*

This section was substantially revised with the publication of February 19, 1999, interim regulations on Article 3 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) in the **Federal Register**, at 64 FR 8478, with a request for comments. Any comments regarding that interim rule will be addressed in the final rule implementing the Convention Against Torture. Some of the comments on the March 6, 1997, interim rule addressed concerns about how the Department would implement Article 3 of the Convention Against Torture. Because many of the commenters' concerns were addressed with the February 19, 1999, interim rule, they will not be addressed in this supplementary information.

Language in paragraph (b) relating to eligibility for withholding of removal is being amended to reflect similar amendments to § 208.13 on adjudicating claims where past persecution has been established. See the discussion in this preamble regarding changes in § 208.13.

*§ 208.19—Decisions*

With the publication of the interim rule at 64 FR 8478 to implement Article 3 of the Convention Against Torture, § 208.17 was revised, §§ 208.18 through 208.22 were redesignated as §§ 208.19 through 208.23, and a new § 208.18 was added. However, due to Department error, § 208.17 was not redesignated and was, therefore, dropped from 8 CFR part 208. This final rule reinstates the former § 208.17 relating to decisions on applications for asylum and for withholding of removal as the new § 208.19, and redesignates §§ 208.19 through 208.23 as §§ 208.20 through 208.24.

Language in § 208.17 that appeared before it was dropped from 8 CFR part 208 has been slightly amended. In response to one comment, language has been added to indicate that a letter communicating denial or referral of the application shall state the basis for the denial or referral.

*§ 208.20—Determining if an Asylum Application is Frivolous*

Section 208.19 has been redesignated as § 208.20, with no substantive changes. One commenter stated that the regulatory definition of ''frivolous'' does not contain appropriate safeguards, and that the Service should advise every asylum applicant of the consequences of filing frivolous claims. The current regulation provides appropriate safeguards by stipulating that an immigration judge or the Board must be satisfied that an applicant had sufficient opportunity to account for any discrepancies before finding that an applicant filed a frivolous application, and by permitting an applicant to seek withholding or removal even if he or she is found to have filed a frivolous application. The regulation itself also advises an applicant that he or she is subject to the provisions of section 208(d)(6) of the Act if a final order specifically finds that the alien knowingly filed a frivolous application. Finally, both the instructions to the Form I–589 and the application itself warn the applicant about the consequences of filing a frivolous claim, as required by section 208(d)(4) of the Act.

The Department believes that the current regulation provides for appropriate safeguards for filing a frivolous asylum application, and that, for the reasons set forth in the supplemental information to the January 3, 1997 proposed rule, the definition of frivolous is sufficient. The Department, therefore, has not changed any language in this section.

A commenter also suggested that an applicant should not be punished for voluntarily withdrawing an asylum application, and that the Department should advise adjudicators that, before finding that an individual filed a frivolous application, they should consider the fact that an applicant may not have been able to afford to retain counsel for advice on the legal strength of an asylum claim. The current regulation does not contain any provisions that punish an applicant for withdrawing an asylum application. Any applicant may choose to withdraw an application at any time prior to a final decision; however, a withdrawal does not preclude the Service from seeking removal of the alien if he or she is deportable or removable. The fact that an applicant may not have hired legal counsel may be one factor, among others, that an immigration judge or the Board may consider when determining whether an applicant had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

*§ 208.21—Admission of Asylee's Spouse and Children*

Section 208.20 has been redesignated as § 208.21 and restructured to provide greater clarity. Additionally, this section has been amended to correct an error in the interim rule published in the **Federal Register** at 62 FR 10312, effective April 1, 1997, which omitted the bar to asylum eligibility based on the commission of a serious non-political crime outside the United States, for applicants who applied on or after April 1, 1997. The omission was inadvertent, since such ground had been specifically included under IIRIRA for asylees. That error has been corrected and the provision redrafted to specify the applicable bar for derivative applications filed prior to April 1, 1997, and those filed on or after April 1, 1997. The Service finds that good cause exists for adopting the provision in this final rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b) because the provision merely codifies in the Service's regulation the statutory mandates of

section 604 of IIRIRA. In addition, after reviewing the Department's implementation of the statutory mandate, it is clear that the omission was an inadvertent error. Therefore, the notice and comment period normally required under 5 U.S.C. 553(b) is impracticable and unnecessary prior to adopting this provision.

*§ 208.22—Effect on Exclusion, Deportation, or Removal Proceedings*

Section 208.21 has been redesignated as § 208.22, and paragraph (b), which addresses the initiation of removal proceedings upon termination of an asylum grant, has been moved to § 208.24.

*§ 208.24—Termination of Asylum and Withholding of Removal*

Section 208.23 has been redesignated as § 208.24. Some comments on § 208.24 suggested that the provision be removed or narrowed, and that more procedural protections be provided before termination. The Department finds that the existing procedural protections, which provide for prior notice of grounds for termination and an opportunity to respond, are sufficient. No changes have been made in the regulations governing termination procedures.

However, § 208.24(b)(1) was revised for consistency with the revisions in this final rule to § 208.16 and for consistency with the provisions for termination of asylum. The provision that ''[t]he alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld'' has been replaced with, ''The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.''

In addition, the former § 208.21(b), concerning the initiation of removal proceedings, is now paragraph (e) of this section. The Department deleted the phrase ''under section 235 or 240 of the Act'' from the former § 280.21(b) because an alien may be subject to removal under other sections of the Act, such as section 238, which concerns administrative removal of aggravated felons, or section 241(a)(5), which requires reinstatement of prior orders under certain circumstances.

*§ 208.30—Credible Fear Determinations*

The format of this section has been revised for the purpose of clarity. Also, a new paragraph (b) has been added at § 208.30; that paragraph provides that an accompanying dependent (spouse or child) may be included in the application of the principal alien, if the spouse or child so chooses.

Some commenters objected to the use of telephonic interpreters in credible fear interviews. Telephonic interpretation has given asylum officers flexibility in scheduling and conducting credible fear interviews, and has proven to be a reliable source of interpretation services. First, because the number of languages available through telephonic interpretation is quite large, applicants can be interviewed in the language or dialect with which they are most comfortable. Relying on physically present interpreters would limit the number of languages that are available and, although an alien may be able to speak a particular language or dialect, it may not be the language or dialect with which the alien is most comfortable speaking and understanding. Second, if an applicant requests an interpreter of a gender other than that of the individual initially assigned to perform telephonic interpretation services, a replacement interpreter can be easily identified and enlisted when using a telephonic interpreter, so the interview does not need rescheduling. The use of physically present interpreters usually limits the ability to secure such quick personnel replacements. Finally, an asylum officer can always locate an interpreter for a particular language on short notice regardless of whether the interview is conducted at a detention facility or at a remote location, such as a border port-of-entry. In many instances, live interpreters cannot appear for an interview on short notice or are not willing to travel to a remote location for an interview. The current provision for using telephonic interpreters, which has been in place for approximately 3 years, has worked well. However, as mentioned earlier, practices relating to language accessibility in federal programs are under review as part of the Department's compliance with Presidential Executive Order 13116. Therefore, the use of telephonic interpretation will be addressed in compliance with that Executive Order.

Some commenters suggested that the regulations allow counsel to be present during the credible fear interview. The regulations already allow any person with whom the alien chooses to consult to be present. For purposes of this section, the term ''persons'' is interpreted to include legal counsel. Accordingly, the regulation has not been changed in that regard.

There were also some suggestions that the asylum officer's credible fear interview should also serve as an Asylum Pre-Screening Officer (APSO) interview for purposes of determining whether the alien should be released from detention. While a positive credible fear determination may be considered by a district director when making a parole decision, it is not determinative, and other factors must be taken into account, such as whether the applicant is likely to appear for a hearing or may pose a threat to the community.

Some commenters suggested that the rules specify that credible fear is a low screening standard. The Department finds that language in section 235(b)(1)(B)(v) of the Act is more precise than the rather vague term ''low.'' While the Department does not disagree that it is a threshold or low standard, defining it as such would only foster debate about what ''low'' means. Accordingly, the regulation has not been amended in that regard.

There were also some suggestions that, when a case raises a novel issue of law, the individual should be referred for a full hearing before an immigration judge. The regulation has been clarified to provide that, in making a credible fear determination, the asylum officer or immigration judge shall take into consideration whether the case presents novel or unique issues.

Likewise, there were also suggestions that such a referral should be made regardless of any apparent statutory ineligibility under section 208(a)(2) or 208(b)(2)(A) of the Act. The Department has adopted that suggestion and has so amended the regulation.

Several commenters suggested that the Service should presume a request for appeal by any alien who expressed fear to a pre-screening officer and tried without success to persuade an asylum officer that the alien has a credible fear of persecution. It would be contrary to the intent of the statute to mandate a review in every case, including those where the alien clearly and knowingly decides not to pursue a review. However, the regulations have been modified to provide that an alien's failure or refusal to indicate whether he or she desires a review shall be deemed to be a request for such review.

The Department has also amended paragraph (b) regarding the interview procedure by adopting language from § 208.9 on eliciting testimony and who may act as an interpreter.

Finally, in § 208.30(g)(2)(iv)(A), the Department added language that would permit the Service to reconsider a negative credible fear determination, even after such determination has been affirmed by an immigration judge, as long as the Service provides the immigration judge with notice of its reconsideration.

**Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will ensure that asylum applications are processed in accordance with the Act, as amended by IIRIRA, as well as with international instruments. Moreover, it will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

**Executive Order 13132**

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 responsibility among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

**Executive Order 12988**

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

**Paperwork Reduction Act**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

**List of Subjects in 8 CFR Part 208**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 208 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.2 is revised to read as follows:

### § 208.2 Jurisdiction

(a) *Office of International Affairs.* Except as provided in paragraph (b) or (c) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry. The Office of International Affairs shall also have initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

(b) *Jurisdiction of Immigration Court in general.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served a Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Immigration Court under § 208.31, and credible fear determinations referred to the Immigration Court under § 208.30.

(c) *Certain aliens not entitled to proceedings under section 240 of the Act.*

(1) *Asylum applications and withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution or torture pursuant to the procedures set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under § 235(c) of the Act, as described in § 235.8(a) of this chapter (applicable only in the event that the alien is referred for proceedings under this paragraph by the Regional Director pursuant to section 235.8(b)(2)(ii) of this chapter); or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act (applicable only in the event that the alien is referred for proceedings under this paragraph by the district director).

(2) *Withholding of removal applications only.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any application for withholding of removal filed by:

(i) An alien who is the subject of a reinstated removal order pursuant to section 241(a)(5) of the Act; or

(ii) An alien who has been issued an administrative removal order pursuant to section 238 of the Act as an alien convicted of committing an aggravated felony.

(3) *Rules of procedure.*

(i) *General.* Except as provided in this section, proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (c)(1) or (c)(2) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, subpart A. The scope of review in proceedings conducted pursuant to paragraph (c)(1) of this section shall be limited to a determination of whether the alien is eligible for asylum or withholding or deferral of removal, and whether asylum shall be granted in the exercise of discretion. The scope of review in proceedings conducted pursuant to paragraph (c)(2) of this section shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal. During such proceedings, all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence, which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) ''Exceptional circumstances,'' as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge issues an order granting a stay pending disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 of the Act for a period of 10 years after the date of the denial, unless the applicant can show exceptional circumstances resulted in his or her failure to appear.

3. Section 208.3 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (c)(4); and

c. Revising paragraph (c)(5), to read as follows:

**§ 208.3 Form of application.**

(a) An asylum applicant must file Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

* * * * *

(c) * * *

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil or criminal penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.20.

4. Section 208.4 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3); and

d. Revising paragraph (b)(5), to read as follows:

**§ 208.4 Filing the application.**

* * * * *

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16. If an applicant files an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer, in an interview, or an immigration judge, in a hearing, shall review the application and give the applicant the opportunity to present any relevant and useful information bearing on any prohibitions on filing to determine if the application should be rejected. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act.

(2) *One-year filing deadline.*

(i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving:

(A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or

(B) To the satisfaction of the asylum officer, the immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline.

(ii) The 1-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. When the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For the purpose of making determinations under section 208(a)(2)(B) of the Act only, an application is considered to have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of this chapter. In a case in which the application has not been received by the Service within 1 year from the applicant's date of entry into the United States, but the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For cases before the Immigration Court in accordance with § 3.13 of this chapter, the application is considered to have been filed on the date it is received by the Immigration Court. For cases before the Board of Immigration Appeals, the application is considered to have been

filed on the date it is received by the Board. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, the asylum officer, the immigration judge, or the Board will determine whether the applicant qualifies for an exception to the deadline.

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals.

(4) *Changed circumstances.*

(i) The term ''changed circumstances'' in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include, but are not limited to:

(A) Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;

(B) Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or

(C) In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

(ii) The applicant shall file an asylum application within a reasonable period given those ''changed circumstances.'' If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness shall be taken into account in determining what constitutes a ''reasonable period.''

(5) The term ''extraordinary circumstances'' in section 208(a)(2)(D) of the Act shall refer to events or factors directly related to the failure to meet the 1-year deadline. Such circumstances may excuse the failure to file within the 1-year period as long as the alien filed the application within a reasonable period given those circumstances. The burden of proof is on the applicant to establish to the satisfaction of the asylum officer, the immigration judge, or the Board of Immigration Appeals that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the 1-year period, and that the delay was reasonable under the circumstances. Those circumstances may include but are not limited to:

(i) Serious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival;

(ii) Legal disability (*e.g.,* the applicant was an unaccompanied minor or suffered from a mental impairment) during the 1-year period after arrival;

(iii) Ineffective assistance of counsel, provided that:

(A) The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;

(B) The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and

(C) The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;

(iv) The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum application;

(v) The applicant filed an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter; and

(vi) The death or serious illness or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

(b) * * *

(2) *With the asylum office.* An asylum application shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who:

(i) Has received the express consent of the asylum office director or the Director of Asylum to do so, or

(ii) Previously was included in a spouse's or parent's pending application but is no longer eligible to be included as a derivative. In such cases, the derivative should include a cover letter referencing the previous application and explaining that he or she is now independently filing for asylum.

(3) *With the Immigration Court.* Asylum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the underlying proceeding.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(iii) In asylum proceedings pursuant to § 208.2(c)(1) and after the Form I–863, Notice of Referral to Immigration Judge, has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) * * *

(5) *With the district director.* In the case of any alien described in § 208.2(c)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. If the district director elects to issue the Form I–863, the district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

* * * * *

5. Section 208.5 is amended by:

a. Revising the first sentence in paragraph (a);

b. Adding a new second sentence in paragraph (a); and

c. Revising paragraph (b)(1)(ii), to read as follows:

**§ 208.5 Special duties toward aliens in custody of the Service.**

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal, or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear determination under § 208.30 or a reasonable fear determination pursuant to § 208.31. Although the Service does not have a duty in the case of an alien who is in custody pending a credible fear or reasonable fear determination under either § 208.30 or § 208.31, the Service

may provide the appropriate forms, upon request. * * *

(b) * * *

(1) * * *

(ii) An alien crewmember shall be provided the appropriate application forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port-of-entry. The district director may extend the 10-day filing period for good cause. Once the application has been filed, the district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

* * * * *

6. Section 208.6 is revised to read as follows:

**§ 208.6 Disclosure to third parties.**

(a) Information contained in or pertaining to any asylum application, records pertaining to any credible fear determination conducted pursuant to § 208.30, and records pertaining to any reasonable fear determination conducted pursuant to § 208.31, shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service and the Executive Office for Immigration Review that indicate that a specific alien has applied for asylum, received a credible fear or reasonable fear interview, or received a credible fear or reasonable fear review shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of those records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The consideration of a request for a credible fear or reasonable fear interview, or a credible fear or reasonable fear review;

(iii) The defense of any legal action arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear determination or reasonable fear determination under § 208.30 or § 208.31;

(iv) The defense of any legal action of which the asylum application, credible fear determination, or reasonable fear determination is a part; or

(v) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, State, or local court in the United States considering any legal action:

(i) Arising from the adjudication of, or failure to adjudicate, the asylum application, or from a credible fear or reasonable fear determination under § 208.30 or § 208.31; or

(ii) Arising from the proceedings of which the asylum application, credible fear determination, or reasonable fear determination is a part.

**§ 208.9 [Amended]**

7. In § 208.9, paragraph (d) is amended by revising the reference to ''§ 208.14(b)'' to read ''§ 208.14(c).''

8. Section 208.12 is amended by revising paragraph (b) to read as follows:

**§ 208.12 Reliance on information compiled by other sources.**

* * * * *

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State. Persons may continue to seek documents available through a Freedom of Information Act (FOIA) request pursuant to 8 CFR part 103.

9. Section 208.13 is amended by:

a. Revising the heading of paragraph (b);

b. Revising paragraph (b)(1);

c. Revising paragraph (b)(2);

d. Adding new paragraph (b)(3);

e. Adding a new paragraph (c)(2)(i)(F); and

f. Removing paragraph (d), to read as follows:

**§ 208.13 Establishing asylum eligibility.**

* * * * *

(b) *Eligibility.* * * *

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

(i) *Discretionary referral or denial.* Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) *Burden of proof.* In cases in which an applicant has demonstrated past persecution under paragraph (b)(1) of this section, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (B) of this section.

(iii) *Grant in the absence of well-founded fear of persecution.* An applicant described in paragraph (b)(1)(i) of this section who is not barred from a grant of asylum under paragraph (c) of this section, may be granted asylum, in the exercise of the decision-maker's discretion, if:

(A) The applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or

(B) The applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.

(2) *Well-founded fear of persecution.* (i) An applicant has a well-founded fear of persecution if:

(A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and

(C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.

(ii) An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.

(iii) In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(F) Is described within section 212(a)(3)(B)(i)(I),(II), and (III) of the Act as it existed prior to April 1, 1997, and as amended by the Anti-terrorist and Effective Death Penalty Act of 1996 (AEDPA), unless it is determined that there are no reasonable grounds to believe that the individual is a danger to the security of the United States.

* * * * *

10. Section 208.14 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c)–(f) as paragraphs (d)–(g);

c. Adding a new paragraph (c);

d. Revising newly redesignated paragraph (e); and

e. Adding a heading to new redesignated paragraph (g), to read as follows:

**§ 208.14 Approval, denial, referral, or dismissal of application.**

* * * * *

(b) *Approval by an asylum officer.* In any case within the jurisdiction of the Office of International Affairs, unless otherwise prohibited in § 208.13(c), an asylum officer may grant, in the exercise of his or her discretion, asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer does not grant asylum to an applicant after an interview conducted in accordance with § 208.9, or if, as provided in § 208.10, the applicant is deemed to have waived his or her right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application, as follows:

(1) *Inadmissible or deportable aliens.* Except as provided in paragraph (c)(4) of this section, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging documents may not be issued, shall dismiss the application).

(2) *Alien in valid status.* In the case of an applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status at the time the application is decided, the asylum officer shall deny the application for asylum.

(3) *Alien with valid parole.* If an applicant has been paroled into the United States and the parole has not expired or been terminated by the Service, the asylum officer shall deny the application for asylum.

(4) *Alien paroled into the United States whose parole has expired or is terminated.*

(i) *Alien paroled prior to April 1, 1997, or with advance authorization for parole.* In the case of an applicant who was paroled into the United States prior to April 1, 1997, or who, prior to departure from the United States, had received an advance authorization for parole, the asylum officer shall refer the application, together with the appropriate charging documents, to an immigration judge for adjudication in removal proceedings if the parole has expired, the Service has terminated parole, or the Service is terminating parole through issuance of the charging documents, pursuant to § 212.5(d)(2)(i) of this chapter.

(ii) *Alien paroled on or after April 1, 1997, without advance authorization for parole.* In the case of an applicant who is an arriving alien or is otherwise subject to removal under § 235.3(b) of this chapter, and was paroled into the United States on or after April 1, 1997, without advance authorization for parole prior to departure from the United States, the asylum officer will take the following actions, if the parole has expired or been terminated:

(A) *Inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act.* If the applicant appears inadmissible to the United States under section 212(a)(6)(C) or 212(a)(7) of the Act and the asylum officer does not intend to lodge any additional charges of inadmissibility, the asylum officer shall proceed in accordance with § 235.3(b) of this chapter. If such applicant is found to have a credible fear of persecution or torture based on information elicited from the asylum interview, an asylum officer may refer the applicant directly to an immigration judge in removal proceedings under section 240 of the Act, without conducting a separate

credible fear interview pursuant to § 208.30. If such applicant is not found to have a credible fear based on information elicited at the asylum interview, an asylum officer will conduct a credible fear interview and the applicant will be subject to the credible fear process specified at § 208.30(b).

(B) *Inadmissible on other grounds.* In the case of an applicant who was paroled into the United States on or after April 1, 1997, and will be charged as inadmissible to the United States under provisions of the Act other than, or in addition to, sections 212(a)(6)(C) or 212(a)(7), the asylum officer shall refer the application to an immigration judge for adjudication in removal proceedings.

* * * * *

(e) *Duration.* If the applicant is granted asylum, the grant will be effective for an indefinite period, subject to termination as provided in § 208.24.

* * * * *

(g) *Applicants granted lawful permanent residence status.* * * *

11. Section 208.15 is revised to read as follows:

**§ 208.15 Definition of ''firm resettlement.''**

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

12. Section 208.16 is amended by

a. Revising paragraph (b)(1);

b. Revising paragraph (b)(2);

c. Revising paragraph (b)(3);

The revisions read as follows:

**§ 208.16 Withholding of removal under section 241(b)(3) of the Act and withholding of removal under the Convention Against Torture.**

* * * * *

(b) * * *

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) *Reasonableness of internal relocation.* For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

* * * * *

**§§ 208.19 through 208.23 [Redesignated as §§ 208.20 through 208.24, respectively].**

13. Sections 208.19 through 208.23 are redesignated as §§ 208.20 through 208.24, respectively.

14. Section 208.19 is added to read as follows:

**§ 208.19 Decisions.**

The decision of an asylum officer to grant or to deny asylum or to refer an asylum application, in accordance with § 208.14(b) or (c), shall be communicated in writing to the applicant. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate. A letter communicating denial of asylum or referral of the application shall state the basis for denial or referral and include an assessment of the applicant's credibility.

15. Newly redesignated § 208.21 is amended by revising paragraph (a) to read as follows:

**§ 208.21 Admission of the asylee's spouse and children.**

(a) *Eligibility.* In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under § 208.13(c)(2)(i)(A), (C), (D), (E), or (F) for applications filed before April 1, 1997.

* * * * *

16. Newly redesignated § 208.22 is revised to read as follows:

**§ 208.22 Effect on exclusion, deportation, and removal proceedings.**

An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.24 or deferral is terminated pursuant to § 208.17(d) or (e).

17. Newly redesignated § 208.24 is amended by:

a. Revising paragraph (b)(1);

b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

c. Adding a new paragraph (e); and

d. Revising newly redesignated paragraphs (f) and (g), to read as follows:

**§ 208.24 Termination of asylum or withholding of removal or deportation.**

* * * * *

(b) * * *

(1) The alien is no longer entitled to withholding of deportation or removal because, owing to a fundamental change in circumstances relating to the original claim, the alien's life or freedom no longer would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the country from which deportation or removal was withheld.

* * * * *

(e) *Removal proceedings.* When an alien's asylum status or withholding of removal or deportation is terminated under this section, the Service shall initiate removal proceedings, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may take place in conjunction with a termination hearing scheduled under § 208.24(f).

(f) *Termination of asylum, or withholding of deportation or removal, by an immigration judge or the Board of Immigration Appeals.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum, or a withholding of deportation or removal. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum, or a withholding of deportation or removal, made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation, or removal proceeding.

(g) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in § 208.24 and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

18. Section 208.30 is revised to read as follows:

**§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.**

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (g) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act.

(b) *Treatment of dependents.* A spouse or child of an alien may be included in that alien's credible fear evaluation and determination, if such spouse or child:

(1) Arrived in the United States concurrently with the principal alien; and

(2) Desires to be included in the principal alien's determination. However, any alien may have his or her credible fear evaluation and determination made separately, if he or she expresses such a desire.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Interview.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture, and shall conduct the interview as follows:

(1) If the officer conducting the credible fear interview determines that the alien is unable to participate effectively in the interview because of illness, fatigue, or other impediments, the officer may reschedule the interview.

(2) At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has

an understanding of the credible fear determination process.

(3) The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General.

(4) The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and on the length of the statement.

(5) If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter must be at least 18 years of age and may not be the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, a representative or employee of the applicant's country of nationality, or, if the applicant is stateless, the applicant's country of last habitual residence.

(6) The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct any errors therein.

(e) *Determination.* (1) The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture.

(2) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer or immigration judge shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(3) If an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Service shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Service shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(4) An asylum officer's determination shall not become final until reviewed by a supervisory asylum officer.

(f) *Procedures for a positive credible fear finding.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–863, Notice of Referral to Immigration Judge, for full consideration of the asylum claim, or the withholding of removal claim, in proceedings under § 208.2(c). Parole of the alien may be considered only in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter.

(g) *Procedures for a negative credible fear finding.* (1) If an alien is found not to have a credible fear of persecution or torture, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge. The alien shall indicate whether he or she desires such review on Form I–869. A refusal by the alien to make such indication shall be considered a request for review.

(i) If the alien requests such review, or refuses to either request or decline such review, the asylum officer shall arrange for detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge, for review of the credible fear determination in accordance with paragraph (f)(2) of this section.

(ii) If the alien is not a stowaway and does not request a review by an immigration judge, the officer shall order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal, after review by a supervisory asylum officer.

(iii) If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(2) Review by immigration judge of a negative credible fear finding.

(i) The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, or upon the applicant's refusal either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

(ii) The record of the negative credible fear determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

(iii) A credible fear hearing shall be closed to the public unless the alien states for the record or submits a written statement that the alien is waiving that requirement; in that event the hearing shall be open to the public, subject to the immigration judge's discretion as provided in § 3.27.

(iv) Upon review of the asylum officer's negative credible fear determination:

(A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed. The Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.

(B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 208.4(b)(3)(i).

(C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the

application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

Dated: November 27, 2000.

**Janet Reno,**

*Attorney General.*

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 109 and 110

**[Notice 2000—21]**

### General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is adopting new rules to address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address expenditures for communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The Commission is also revising the definition of ''independent expenditure,'' to conform with this new definition. Further changes to the rules on coordination between political party committees and their candidates are awaiting the outcome of a pending Supreme Court case. Additional information is provided in the supplementary information that follows.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

**SUPPLEMENTARY INFORMATION:** The Commission is issuing final rules at 11 CFR 100.23 that address coordinated communications that include clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where a candidate, authorized committee, or party committee has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. Other than the requirement that covered communications include a clearly identified candidate, the new rules contain no content standard. The Commission is also revising its rules at 11 CFR 100.16 and 109.1, which define ''independent expenditure,'' to conform with this new definition; and making conforming amendments to 11 CFR 110.14, the section of the Commission's rules that deals with contributions to and expenditures by delegates and delegate committees.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. Because these rules were approved by the Commission on November 30, 2000, which is less than 30 legislative days before the adjournment of the 106th Congress, the Commission plans to transmit them to Congress on the first day of the 107th Congress, which will occur in January 2001. A Notice announcing the effective date of these rules will be published in the **Federal Register**.

### Explanation and Justification

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* (''FECA'' or the ''Act'') prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes limits on the amount of money or in-kind contributions that other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). Individuals and persons other than corporations, labor organizations, government contractors and foreign nationals can make independent expenditures in connection with federal campaigns. 11 CFR 110.4(a) and 115.2. Independent expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. *Buckley* v. *Valeo,* 424 U.S. 1, 46–47 (1976) (footnote omitted) (''*Buckley*''); *Federal Election Commission v. The Christian Coalition,* 52 F.Supp.2d 45, 85 (D.D.C. 1999) (''*Christian Coalition*''). As such, they are subject to the limits and prohibitions set out in the Act. The Act defines ''contribution'' at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The Commission is promulgating new rules at 11 CFR 100.23 that define the term *coordinated general public political communication.* They generally follow the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra.* This decision sets out at length the standards to be used to determine whether expenditures for communications by unauthorized committees, advocacy groups and individuals are coordinated with candidates or qualify as independent expenditures.

*A. History of the Rulemaking*

This rulemaking was originally initiated to implement the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado I*) concerning the application of section 441a(d) of the FECA. In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such

independent expenditures to the section 441a(d) expenditure limits. *Id.* at 2315.

Section 441a(d) permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amount they may contribute directly to those candidates. 2 U.S.C. 441a(d). These section 441a(d) expenditures are commonly referred to as ''coordinated party expenditures.'' Prior to the *Colorado* case, it was presumed that party committees could not make expenditures independent of their candidates.

The Commission notes that not all coordinated expenditures constitute communications. In fact, party committees may use their coordinated expenditure limits to pay for many other types of expenses incurred by candidates, including staff costs, polling and other services.

Following the *Colorado I* Supreme Court decision, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee filed a Petition for Rulemaking urging the Commission to (1) repeal or amend 11 CFR 110.7(b)(4) to the extent that that paragraph prohibited national committees of political parties from making independent expenditures for congressional candidates; (2) repeal or amend 11 CFR Part 109 with respect to which expenditures qualify as ''independent''; and (3) issue new rules to provide meaningful guidance regarding independent expenditures by the national committees of political parties. Although the Petition for Rulemaking urged changes only in the rules applicable to national committees of political parties, the Commission's rulemaking also sought comment on proposed changes to the provisions governing state and local party committees, as well as coordination by outside groups with either candidates or party committees.

In response to the *Colorado I* decision, the Commission promulgated a Final Rule on August 7, 1996 which repealed paragraph (b)(4) of section 110.7. *See* 61 F.R. 40961 (Aug. 7, 1996). That paragraph had provided that party committees could not make independent expenditures in connection with federal campaigns. On the same date, the Commission also published a Notice of Availability (''NOA'') seeking comment on the remainder of the Petitioners'' requests. *See* 61 F.R. 41036 (Aug. 7, 1996). No statements supporting or opposing the petition were received by the close of the comment period.

On May 5, 1997 the Commission published an NPRM in which it sought comments on proposed revisions to these regulations. 62 FR 24367 (May 5, 1997). Comments in response to this NPRM were received from Common Cause; the Democratic National Committee (''DNC''); the Democratic Senatorial Campaign Committee (''DSCC'') and the Democratic Congressional Campaign Committee (''DCCC'') (joint comment); the Internal Revenue Service (''IRS''); the National Republican Congressional Committee (''NRCC''); the National Republican Senatorial Committee (''NRSC''); the National Right to Life Committee; the Republican National Committee (''RNC''); and the United States Chamber of Commerce. On June 18, 1997, the Commission held a public hearing on this Notice, at which witnesses testified on behalf of Common Cause, the DNC, the DSCC and the DCCC, the National Right to Life Committee, the NRSC, and the RNC.

The IRS found no conflict with the Internal Revenue Code or that agency's regulations with regard to any Notice considered in the course of this rulemaking. All other comments received in connection with this rulemaking will be discussed *infra.*

The Commission subsequently decided to hold the 1997 rulemaking in abeyance until it received further direction from the courts. The coordinated spending limits were invalidated on constitutional grounds by the district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 41 F. Supp. 2d 1197 (D. Colo. 1999) (*Colorado II*), on remand from the *Colorado I* Supreme Court decision. In May 2000, that decision was affirmed by the Court of Appeals for the Tenth Circuit. 213 F.3d 1221 (10th Cir. 2000). The Supreme Court has now agreed to review this decision. 2000 WL 1201886 (U.S. Oct. 10, 2000) (No. 00–191).

On December 16, 1998, the Commission published a new NPRM putting forth proposed amendments to its rules governing publicly financed presidential primary and general election candidates. 63 FR 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their presidential candidates, which had been raised in the earlier NPRM, were addressed in the public funding rulemaking. For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual presidential nominees.

The Commission received seven written comments on coordinated expenditures in response to the 1998 NPRM. Commenters included the Brennan Center for Justice at New York University School of Law (''Brennan Center''); Common Cause and Democracy 21 (joint comment); the DNC; the James Madison Center for Free Speech; Perot '96; the RNC; and the law firm of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori, Esq. (joint comment). The Commission subsequently reopened the comment period and held a public hearing on March 24, 1999, at which witnesses representing the DNC; the James Madison Center for Free Speech; the RNC; and Ryan, Phillips, Utrecht & MacKinnon presented testimony on coordination issues.

On November 3, 1999, the Commission promulgated new paragraph (d) of section 110.7, addressing pre-nomination coordinated expenditures. 64 FR 59606 (Nov. 3, 1999). The new paragraph states that party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. It further states that all pre-nomination coordinated expenditures are subject to the section 441a(d) coordinated expenditure limitations, whether or not the candidate with whom they are coordinated receives the party's nomination. Please note that new § 110.7(d) applies to all federal elections. For additional information, see *Explanation and Justification for Section 110.7, Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d)),* 64 FR 42579, 42580–81 (Aug. 5, 1999).

The Commission published the document that serves as the primary basis for these final rules, a Supplemental Notice of Proposed Rulemaking (''SNPRM'') addressing general public political communications coordinated with candidates, on December 9, 1999. 64 FR 68951 (Dec. 9, 1999). The Commission received 15 comments in response to the SNPRM, from the Alliance for Justice; the American Federation of Labor-Congress of Industrial Organizations (''AFL-CIO''); the Brennan Center; The Coalition; Common Cause and Democracy 21 (joint comment); the DNC; the DSCC and DCCC (joint

comment); the First Amendment Project of the Americans Back in Charge Foundation; the IRS; the James Madison Center for Free Speech; J. B. Mixon, Jr.; the National Education Association; the NRSC; the RNC; and United States Senators Russell D. Feingold, John McCain, Carl Levin and Richard J. Durbin (joint comment). In addition, the Commission held a public hearing on the SNPRM on February 16, 2000, at which nine witnesses testified on behalf of the Alliance for Justice, the AFL-CIO, the Americans Back in Charge Foundation, the Brennan Center, The Coalition, the DNC, the DSCC and DCCC, the James Madison Center for Free Speech, and the RNC.

*B. The Christian Coalition Decision*

The *Christian Coalition* case arose out of an FEC enforcement action alleging coordination between the Christian Coalition and various federal campaigns in connection with the 1990, 1992, and 1994 elections, resulting in disbursements from the Coalition's general corporate treasury for voter guides, ''get out the vote'' activities, direct mailings and payments to speakers. The Christian Coalition characterized these activities as independent corporate speech; while the FEC alleged that, because of the varying degrees of interaction between the Christian Coalition and those candidates and their campaigns, the activities must be treated as in-kind contributions that violated the Act's contribution limits and/or prohibitions.

In setting out a working definition of ''coordination,'' the *Christian Coalition* court explained that ''the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between candidates and corporations and unions.'' 52 F.Supp.2d at 88–89. The court continued, ''First Amendment clarity demands a definition of ''coordination'' that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interest in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association.'' *Id.* at 91. In its opinion the district court referred to ''expressive expenditures,'' as opposed to expenditures for other types of campaign support, and defined a ''coordinated expressive expenditure'' as ''one for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign.'' Id. at 85, n. 45.

The court went on to explain that ''an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) Contents; (2) timing; (3) location, mode, or intended audience (*e.g.*, choice between newspaper or radio advertisement); or (4) 'volume' (*e.g.,* number of copies of printed materials or frequency of media spots). 'Substantial discussion or negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.'' *Id.* at 92. The court acknowledged that ''a standard that requires 'substantial' anything leaves room for factual dispute,'' but reasoned that the standard reflects a reasonable balance between possibly chilling some protected speech and the need to protect against the ''real dangers to the integrity of the electoral process'' expressive expenditures may present. *Id.*

The district court then applied this standard to the challenged campaign activities. In most instances the court did not find coordination. For example, the court found no coordination between the Christian Coalition and the Bush-Quayle campaign in the preparation of voter guides in connection with the 1992 presidential campaign, explaining that, while the campaign was generally aware President Bush would compare favorably in the eyes of the target audience with the other candidates profiled in the guides, the campaign staff did not seek to discuss the issues that would be profiled or how they would be worded. Nor did they seek to influence the Coalition's decisions as to how many guides would be produced, and when and where they would be distributed. *Id.* at 93–95. Similarly, the fact that a Coalition official served as a volunteer in a 1994 House campaign and also made decisions as to where the Coalition's voter guides would be distributed in connection with that campaign did not amount to coordination where the official did not make his decisions based on any discussions or negotiations with the campaign for which he volunteered. *Id.* at 95–96. In contrast, the court found coordination where the Coalition provided a Senate campaign consultant with a commercially valuable mailing list. *Id.* at 96. The Commission subsequently decided not to appeal the district court's decision.

*C. Other Court Decisions*

In *Clifton* v. *Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 1036 (1998) (''*Clifton*''), the United States Court of Appeals for the First Circuit ruled that coordination in the context of voter guides ''implie(s) some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue.'' 114 F.3d at 1311, citing *Buckley*, 424 U.S. at 46–47 and n. 53 (1976). The court invalidated those portions of the Commission's voter guide regulations at 11 CFR 114.4(c)(5)(i) and (ii)(C) that limit any contact with candidates to written inquiries and replies, and generally require all candidates for the same office to receive equal space and prominence in the guide. *Id.* at 1317. The court also invalidated the Commission's voting record rules at 11 CFR 114.4(c)(4) to the extent they could be read to prohibit mere inquiries to candidates. *Id* [1] In *Federal Election Commission* v. *Public Citizen, Inc.*, 64 F.Supp.2d 1327 (N.D. Ga. 1999), a federal district court followed the *Clifton* ''collaboration'' language in holding that contacts between a public interest group and a candidate made in connection with an advertising campaign to defeat a candidate for the House of Representatives were not coordinated for FECA purposes. The Commission did not appeal that portion of the *Public Citizen* decision that addresses the coordination standard.

*D. General Concerns Raised by Commenters*

The commenters and witnesses raised several general points in connection with the SNPRM. Several noted that the FECA does not use the terms ''coordinated'' or ''coordination'' in discussing campaign contributions and expenditures. This regulation uses the single term ''coordination'' to encompass those expenditures described in 2 U.S.C. 441a(a)(7)(B)(i) as made ''in cooperation, consultation, or

[1] On July 20, 1999, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech, on behalf of the Iowa Right to Life Committee, seeking repeal of the rules at 11 CFR 114.4(c)(4) and (c)(5) to reflect the *Clifton* decision. The Commission published an NOA on this petition on Aug. 25, 1999. 64 FR 46319 (Aug. 25, 1999). Further action on that petition, which is related to the issues addressed in this rulemaking, will be taken by the Commission after this rulemaking has been concluded.

concert with, or at the request or suggestion of, a candidate.'' The statutory terms are not inherently clear, nor does the Act's legislative history provide much guidance. Thus, these rules will fill what is largely a vacuum in this area. All of the commenters, regardless of the positions they espoused, asked the Commission to issue clear rules that provide the regulated community with sufficient guidance to easily understand which communications come within the definition.

One commenter, citing *Buckley*, 424 U.S. at 48 (1976), argued that the Commission was powerless to act in this area, because it had not shown that covered communications involved actual corruption between those making the communications in question and the recipient candidates. However, after the SNPRM was published, the Supreme Court's decision in *Nixon* v. *Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000) (*Shrink Missouri*) upheld the constitutionality of State contribution limits, which the Court said could be based, *inter alia*, on newspaper accounts that inferred the impropriety of large contributions. *Id.* at 907. While some commenters argued that the holding in *Shrink Missouri* is limited to non-federal contributions, others stated that, in their view, this decision vitiates the need for the Commission to find *quid pro quo* corruption in a particular case before taking action in this area. The Commission agrees with this latter view, that the holding in *Shrink Missouri* is applicable to federal contribution limits.

*E. Content of Covered Communications*

Several commenters urged the Commission to limit the definition of general public political communications to communications that contain ''express advocacy'' of the election or defeat of a clearly identified candidate, *i.e.*, those covered by the Commission's definition of ''express advocacy'' as defined at 11 CFR 100.22(a). That paragraph requires the use of individual words or phrases that, in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). They argued that express advocacy is constitutionally required even for communications specifically requested by a candidate to benefit the candidate's campaign. Other commenters, citing the definition of ''independent expenditure'' at 2 U.S.C. 431(17), *supra*, argued that any contact with a candidate or campaign should result in coordination.

Several commenters urged the Commission to limit the definition of general public political communications to communications that refer to clearly identified candidates in their status as candidates, or otherwise refer to an election. They noted, for example, that Members of Congress run for office virtually full-time, and argued that communications that referred to them in passing should not be subject to this standard.

The *Buckley* Court emphasized the necessity of avoiding vague or overbroad regulation of political speech. 424 U.S. at 42–44, 77–80. In light of these constitutional concerns, the Commission's goal in adopting § 100.23 is to establish a test that (1) provides reasonable certainty as to which communications between a person and a candidate or a party committee rise to the level of coordination; and (2) properly balances the Commission's ''interest in unearthing disguised contributions,'' *Clifton*, 114 F.3d at 1315, with the right of the citizenry to engage in discussions about public issues with candidates. *Buckley,* 424 U.S. at 14.

The Commission is addressing the constitutional concerns raised in *Buckley* by creating a safe harbor for issue discussion. Section 100.23(d) makes it clear that a candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues will not suffice to establish coordination. In addition, the Commission's new rules establish a ''buffer zone'' for protected speech by requiring that discussions or negotiations regarding certain aspects of a communication must be ''substantial'' and result in ''collaboration or agreement'' in order to rise to the level of coordination. See § 100.23(c)(2)(iii). At a minimum, this new rule is more protective of First Amendment rights than the standard it is replacing.

The Commission is not adopting any content standard as a part of these rules at this time. There were significant disagreements among commenters over what content standard, if any, should be adopted. There is a substantial argument that any of the content standards suggested could be under-inclusive in the context of coordination. Some advertising by campaigns, for instance, does not include express advocacy and does not refer specifically to candidates as candidates or state that they are running for election. Allowing candidates, campaigns and political parties to ask corporations, labor unions or other persons to sponsor that kind of advertising without limit or disclosure could ''give short shrift to the government's compelling interest in preventing real and perceived corruption that can flow from large campaign contributions.'' *Christian Coalition*, 52 F.Supp.2d at 88.

The argument that a communication must constitute express advocacy in order to fall within the definition of ''expenditure,'' 2 U.S.C. 431(9), in all circumstances (and thus be controlling for purposes of defining a ''coordinated expenditure'') is not being addressed in this rulemaking. See *Republican National Committee* v. *Federal Election Commission*, 1:98CV1207 (June 25, 1998 D. D.C.) (slip op.), aff'd, No. 98–5263 (D.C. Cir. Nov. 6, 1998). The term ''expenditure'' includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. Exceptions to this definition are set forth at section 431(9)(B).

A content element in the definition of coordination may be more useful in the context of political party communications coordinated with candidates, a topic which will be addressed in a subsequent phase of this rulemaking. In the party-candidate context the principal question could become how an expenditure is reported rather than how it is financed or whether it is reported at all. The Commission may revisit the issue of a content standard for all coordinated communications when it considers candidate-party coordination.

*Section 100.16 Definition of ''independent expenditure''*

The Commission is amending the definition of independent expenditure in this section to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). It is also adding a conforming amendment, to indicate that the meaning of the phrase ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate,'' is now governed by 11 CFR 100.23, discussed *infra*, instead of former 11 CFR 109.1(b)(4), which has been repealed. Finally, a new cross reference to 11 CFR 109.1 alerts readers to the additional information on independent expenditures contained in that section.

*Section 100.23 Coordinated General Public Political Communications*

The Commission is adding a new section, 11 CFR 100.23, to its rules, to address expenditures for coordinated communications made for the purpose of influencing federal elections that are

paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission believes it is appropriate to place this language in a separate section of the rules to properly alert the regulated community of this standard.

New § 100.23 generally follows the language of the *Christian Coalition* decision, discussed above. The Commission is, however, using the phrase ''expenditures for general public political communications'' in place of ''expressive expenditure,'' the term used by the *Christian Coalition* court, because these rules do not address the content standard analysis in *Christian Coalition*, and ''expenditures for general public political communications'' more precisely describes the types of communications covered by these rules. *See* discussion of § 100.23(c)(1), *infra*.

There was no consensus among the comments and witnesses as to whether the Commission should follow the approach set forth in *Christian Coalition*. Some favored this overall approach although they urged the Commission to limit coverage to communications that contained express advocacy. As explained above, the rules do not address this further limitation. Others opposed this approach, urging retention of a broad definition of coordination.

Although the final rules have been modified somewhat from those proposed in the SNPRM, the Commission continues to believe that the *Christian Coalition* court correctly decided which communications are ''coordinated'' in this context. While the court recognized that it was establishing a difficult standard to meet, the Commission believes the court correctly concluded that a high standard is required to safeguard protected core First Amendment rights.

*Section 100.23(a) Scope*

Paragraph (a)(1) of this section states that these new rules apply to expenditures for general public political communications paid for by separate segregated funds, nonconnected committees, individuals, or any other person except candidates, authorized committees, and party committees. Paragraph (a)(2) notes that coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

In the SNPRM, the Commission sought comments on whether the standard for coordination proposed in that document should be applied to political party expenditures for general public political communications that are coordinated with particular candidates. All party committees that commented on the SNPRM argued that they should not be covered by these rules. They urged the Commission to wait until *Colorado II* has been decided before acting in that area, since that decision could have major ramifications for any rules that might have been adopted in the meantime.

In light of *Colorado II*, the Commission is not amending the rules in 11 CFR 110.7 governing coordinated expenditures between party committees and candidates at this point. The Commission expects that additional guidance will be forthcoming in that decision, at which time it will re-examine this aspect of the rulemaking.

*Section 100.23(b) Treatment of General Public Political Communications as Expenditures and Contributions*

As explained above, for purposes of the FECA, a coordinated expenditure is considered both an expenditure by the person making the expenditure and an in-kind contribution to the recipient candidate or political committee. Consistent with such treatment, paragraph (b) of § 100.23 states that any expenditure covered by these rules shall be treated as both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. 441a and must be reported as both a contribution and an expenditure as required at 2 U.S.C. 434. Please note that the new rules apply not only to situations in which separate segregated funds and nonconnected committees coordinate their expenditures with candidates, but also where they coordinate with party committees, thus clarifying that party committees can themselves receive coordinated contributions.

*Section 100.23(c) Coordination With Candidates and Party Committees*

This paragraph contains the text of the coordination standard: it addresses what contact between a campaign and a person paying for a communication made in connection with that campaign is sufficient to bring that communication within the purview of these rules. Please note that the standards set forth in paragraphs (2)(i), (2)(ii) and (2)(iii) are alternatives. Communications that meet the standard established by any one of these paragraphs are considered coordinated general public political communications for purposes of these rules.

The SNPRM proposed alternative language for the introductory text of this paragraph. Both Alternatives, designated Alternative 1–A and Alternative 1–B, stated that general public political communications would be considered coordinated if paid for by any person other than a candidate, the candidate's authorized committee, or a party committee, provided that the requirements set forth in paragraphs (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section, *infra,* were met. Alternative 1–B would have added an additional requirement before a communication be considered coordinated, namely that it be distributed primarily in the geographic area in which the candidate was running. Alternative 1-A omitted this geographical restriction.

The SNPRM explained that Alternative 1–B was intended to ensure that costs of national legislative campaigns that refer to clearly-identified candidates, and may be designed or endorsed by one or more of the named candidates, not be considered expenditures on behalf of those candidates' campaigns. The Commission noted, however, two concerns with Alternative 1–B: (1) The definition of ''coordination'' would exclude media broadcasts to several adjacent states; and (2) the definition of ''coordination'' would exclude communications disseminated in one state that solicit funds on behalf of a candidate running in another state, if contributors are asked to send their contributions directly to the candidate on whose behalf they are made.

One commenter pointed out that a geographic limit has nothing to do with the concept of coordination. No one addressed the Commission's concern that Alternative 1–B would allow persons to solicit contributions to be sent directly to candidates in another state, without these contributions being considered coordinated. The Commission is adopting Alternative 1–A, because the geographic restriction does not get at the question of whether the parties coordinated a communication.

Please note that, in the SNPRM, the requirement at paragraph (1) of this section that covered communications be paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, was included as part of the introductory text. For clarity, the Commission has decided to place this language in a separate paragraph.

*Section 100.23(c)(2)(i) The ''Request or Suggestion'' Standard*

The Commission also sought comment on two alternatives of a provision, to be located in paragraph (c)(2)(i), which addressed

communications made at the request or suggestion of the candidate or campaign, and those authorized by a candidate or campaign. Alternative 2–A stated that coordination would occur when a communication is created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, candidate's authorized committee, a party committee, or an agent of any of the foregoing. Alternative 2–B would have limited such coordination to those instances where the parties also discuss the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement.

One commenter urged the Commission to adopt Alternative 2–A, because it is consistent with the statutory language. Another found even Alternative 2–B to be overly broad. A party committee argued that the definition was overly broad as applied to party committees; however, as discussed above, that portion of the rulemaking has been held in abeyance pending the Supreme Court's decision in *Colorado II*.

The Commission is adopting an amended version of Alternative 2–A because it is more consistent with the FECA than Alternative 2–B. Section 441a(a)(7)(B)(i) states that ''expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, * * * shall be considered to be a contribution to such candidate.'' The new rule also reflects the following language in the *Christian Coalition* decision: ''The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions.'' 52 F.Supp.2d at 91. The Commission has accordingly decided to adopt an amended version of Alternative 2–A, so that a communication made at the request or suggestion of a candidate will be considered to be coordinated with that candidate, regardless of whether any of the further contacts that would have been required by Alternative 2–B took place. The Commission emphasizes that this regulation encompasses only requests or suggestions for communications to the general public. Thus, a general appeal for support would clearly not fall within the scope of this regulation.

The proposed rules indicated that general public political communications authorized by candidates or party committees would be considered to be coordinated. The final coordination rules do not cover authorized communications, because these expenditures are already in-kind contributions to the candidates or party committees under 11 CFR 100.7(a)(1)(iii), and thus are not mentioned in the statutory definition of ''independent expenditure'' at 2 U.S.C. 431(17). Thus, if these communications contain express advocacy or solicit contributions, they must state who paid for them, and if applicable, that they are authorized by the candidate or the candidate's committee. *See* 11 CFR 110.11(a)(1).

The SNPRM sought comments on a hypothetical in which, shortly before an election, a candidate complained to a supporter that no one had publicized various problems in the personal life of his opponent. The supporter then ran such advertisements. Most of those who commented on this hypothetical thought this hypothetical should fall within the ''request or suggestion'' language. However, some witnesses said that it would not be considered coordinated under either Alternative 2–A or 2–B, and urged the Commission to revise the proposed regulation to ensure that such communications would in fact be considered coordinated. The Commission notes that this hypothetical turns on the precise language used, which would be needed to determine if in fact the candidate requested or suggested that the supporter run the advertisements in question. If the candidate made no request or suggestion, the communication would not be coordinated for purposes of these rules.

In determining whether a particular statement by a candidate or committee constitutes an appeal for an in-kind contribution in the form of a general public political communication, the Commission will consider both whether the requested action appears to be for the purpose of influencing a Federal election and the specificity of the request or suggestion. Such determinations would turn on the same factors addressed specifically in the ''substantial discussion'' standard, *infra*, with the principal difference being that a request or suggestion could be made by a candidate, authorized committee or party committee without any negotiation or immediate response from an outside group. If such a request or suggestion indicated that a communication with specified content would be valuable or important to a candidate or committee, then payments for the communication would constitute in-kind contributions.

One commenter proposed an additional hypothetical, in which a candidate's campaign committee chose to target only urban areas with campaign advertisements because it could not afford to cover the entire State. The director of a rural Political Action Committee (''PAC'') later met the campaign manager and asked whether the campaign would be running ads in rural areas. Told that it would not be, due to lack of money, the rural PAC paid for and distributed the ads. The Commission notes that this mailing would be covered by 11 CFR 109.1(d)(1), part of the Commission's definition of independent expenditures, which states that the financing or dissemination, distribution, or republication of any campaign materials prepared by a candidate, campaign committee or their authorized agent is a contribution by the person making the expenditure, but not an expenditure by the candidate or committee unless coordination is present. *See also* 11 CFR 100.7(a)(1)(iii).

*Section 100.23(c)(2)(ii) The ''Control or Decision-Making'' Standard*

Paragraph (c)(2)(ii) states that communications are coordinated if the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication. This standard is based on the *Christian Coalition* definition, 52 F.Supp.2d at 92; and it, too, would turn on the specific actions involved in each case. The commenters did not focus extensively on this portion of the proposed definition.

*Section 100.23(c)(2)(iii) The ''Substantial Discussion or Negotiation'' Standard*

Under 11 CFR 100.23, a general public political communication is considered coordinated if it is made after substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. The paragraph further provides that substantial discussion or negotiation

can be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

Some commenters expressed uncertainty about the scope of ''substantial,'' which admittedly ''leaves room for factual dispute.'' *Christian Coalition*, 52 F.Supp.2d at 92. By including the word ''substantial,'' the Commission intends to make clear that whether or not ''discussions or negotiations'' satisfy the requirements of § 100.23(c)(2)(iii) will depend not on their frequency but on their substance. The ''substance'' must go beyond protected issue discussion to specific information about how to communicate an issue in a way that is valuable or important for the campaign. The Commission has concluded that when the topic of discussion turns from the candidate's views on a political issue to the candidate's views on how to communicate that issue, there is far greater likelihood of collaboration. Thus, numerous discussions with a campaign about a complex or controversial public issue would not be considered ''substantial'' for the purposes of paragraph (c)(2)(iii), but a brief discussion as to how to phrase an issue, or as to which issues to emphasize, could be considered ''substantial.''

The word ''substantial'' applies not only to discussions about the content of a communication, but also to discussions about the timing, location, mode, intended audience, volume of distribution or frequency of placement of a communication. In those circumstances, ''substantial'' is meant to exclude discussions that do not include enough specific information for collaboration or agreement to occur. For example, if a person states that he is planning to pay for a communication ''soon,'' or to run the ad ''on TV,'' without further probing from the campaign, this would not be considered ''substantial.''

The Commission recognizes, as did the *Christian Coalition* court, that use of the term ''substantial'' means that determinations involving this standard will likely be fact-specific. 52 F.Supp.2d at 92. Those seeking additional guidance as to the application of this standard to specific facts and circumstances are encouraged to make use of the Commission's advisory opinion process. *See* 2 U.S.C. 437f and 11 CFR Part 112.

*Section 100.23(d) Exception*

Consistent with *Buckley, Christian Coalition,* and *Clifton*, paragraph (d) of new section 100.23 provides that a candidate's or political party's response to an inquiry regarding the candidate's or the party's position on legislative or public policy issues does not alone make the communication coordinated.

Several commenters urged the Commission to broaden this exception to include, for example, public policy announcements or communications disseminated as part of a public policy debate; and legislative lobbying campaigns, including grass roots lobbying. While the Commission is generally sympathetic to these concerns, it can be difficult to distinguish between lobbying activities and electoral campaigning. As the *Buckley* Court explained, ''(T)he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.'' 424 U.S. at 42. Further, some of these communications may have components that could trigger application of these rules. Thus the Commission is not enacting the blanket exception recommended by these commenters. However, the Commission stresses that such contacts, while not receiving a blanket exception, do not necessarily result in coordination. The test of 11 CFR 100.23 (c) must still be met.

*Section 100.23(e) Definitions*

This paragraph defines the terms ''general public political communications,'' ''clearly identified,'' and ''agent'' for purposes of these rules. The term ''general public political communications'' includes those made through a broadcasting station, including a cable television operator; newspaper; magazine; outdoor advertising facility; mailing or any electronic medium, including over the Internet or on a web site. Including cable television broadcasts is consistent with the Commission's candidate debate regulations at 11 CFR 110.13(a)(2), while including communications made over the Internet reflects the expanding role of that medium in federal campaigns.

The definition is limited to those communications having an intended audience of over one hundred people. The exclusion of communications with an intended audience of one hundred people or fewer mirrors the Commission's disclaimer rules at 11 CFR 110.11(a)(3), which exempt from the disclaimer requirements direct mailings of one hundred pieces or less.

The term ''general public political communication'' is similar to the term ''general public political advertising,'' which appears in three places in the Act and in several sections of the regulations. The latter term has similar and generally consistent meanings in the Act and the Commission's rules. For example, the definitions of ''contribution'' and ''expenditure'' at 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv) respectively refer to ''broadcasting stations, newspapers, magazines, or similar types of general public political advertising.'' Section 441d(a) of the Act, which addresses communications that require a disclaimer, includes the same list and adds outdoor advertising facilities and direct mailings. The corresponding rules are found at 11 CFR 100.7(b)(9) (definition of ''contribution''), 100.8(b)(10) (definition of ''expenditure''), and 110.11(a)(1) (communications requiring disclaimers). The Commission therefore believes this term is preferable to ''expressive communications,'' the term used in the *Christian Coalition* decision.

The Commission sought comments on a hypothetical in which a Savings and Loan League runs public service announcements intended to reinforce the public's confidence in the safety of deposits in savings and loan institutions. The announcements, which are run in January of an election year, feature a U.S. Senator who is a candidate for reelection. The commenters who discussed this hypothetical argued that the announcements should not be considered coordinated general public political communications, both because of the timing of the announcements, early in an election year, and because they had no electoral content. Although the Commission is not including a specific time period prior to an election in the text of the new rules, timing is an element of coordination in 11 CFR 100.23(c)(2)(ii) and (iii). The *Christian Coalition* decision supports the idea that the timing of a communication is one aspect of whether it is coordinated with a campaign. *Christian Coalition*, 52 F.Supp. 3d at 92. However, as discussed above, the Commission does not believe that the lack of electoral content is controlling.

This is another situation that would turn on the specific facts. *See* discussion of the first hypothetical discussed in connection with paragraph (c)(2)(i), *supra.*

*Section 100.23(e)(2) Definition of ''Clearly Identified''*

The new rules at 11 CFR 100.23(b) limit their coverage to communications that include a ''clearly identified candidate.'' Paragraph (e)(2) of § 100.23 explains that the term ''clearly identified candidate'' has the same

meaning as that in 11 CFR 100.17, which is based on 2 U.S.C. 431(18). Thus, it includes communications where the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ''the President,'' ''your Congressman,'' or ''the incumbent,'' or through an unambiguous reference to his or her status as a candidate such as ''the Democratic Presidential nominee'' or ''the Republican candidate for Senate in the State of Georgia.''

*Section 100.23(e)(3) Definition of ''Agent''*

This paragraph notes that the definition of ''agent'' for purposes of these new rules is identical to that found at 11 CFR 109.1(b)(5), part of the rules defining independent expenditures. The term ''agent'' in this context means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate; or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. The Commission is including this cross reference in 11 CFR 100.23 to clarify that the term has the same meaning in the context of coordinated general public political communications.

*Section 109.1 Independent Expenditures*

In its 1997 NPRM, the Commission sought comment on several proposed revisions to this section, which defines the term ''independent expenditure.'' The commenters and witnesses who addressed this issue at the Commission's 1997 public hearing had equally wide-ranging views this issue. However, those events took place prior to the *Christian Coalition* decision, which the Commission has determined should serve as the basis for this definition.

The Commission is amending the definition of ''independent expenditure'' in paragraph (a) to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). In addition, the § 109.1(a) Commission has included a cross-reference 11 CFR 100.23, to indicate that the meaning of the phrase ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent of authorized committee of such candidate,'' is now clarified by § 100.23, instead of by former paragraph (b)(4) of § 109.1. The Commission is deleting paragraph (b)(4) because the standards for coordination set forth in that section were overbroad. *See Christian Coalition*, 52 F.Supp. at 90.

Former § 109.1(b)(4) explained what was meant by the phrase, ''made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, or any agent, or authorized committee of the candidate.'' It indicated that this covered ''any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication.'' This phrase has been clarified, consistent with the *Christian Coalition* decision, and moved to new 11 CFR 100.23(c)(2).

Former paragraph (b)(4) also addressed contacts between the campaign and the person making the expenditure. For example, it included, at former paragraph (b)(4)(i)(A), a presumption that coordination applied to expenditures ''based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made.'' The *Christian Coalition* court, likening this regulation to an ''insider trading'' standard, held it to be overbroad. 52 F.Supp. 2d at 89–91. The Commission is accordingly revising this paragraph to explain that a communication is ''made with the cooperation of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23.

*Section 110.14 Contributions To and Expenditures By Delegates and Delegate Committees*

This section of the Commission's rules sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process. Paragraphs (f)(2)(i), (f)(2)(ii), (f)(3)(iii), (*i*)(2)(i), (*i*)(2)(ii), and (*i*)(3)(iii) address independent expenditures and in-kind contributions. The Commission is making conforming amendments to these paragraphs to reflect new 11 CFR 100.23 and revised 11 CFR 109.1.

*Advisory Opinions Superseded*

The Commission has in the past issued Advisory Opinions (''AO'') that employed a broader definition of ''coordination'' than is contained in these new rules. Many of these AOs addressed the ''insider trading'' situation in which a campaign employee later became involved, or sought to become involved, with an entity that wished to make independent expenditures. This prohibition was found to be overly broad by the *Christian Coalition* court. *See* discussion of revised 11 CFR 109.1(b)(4), *supra*, which has been rewritten to reflect that aspect of the decision. The following AOs are superseded, to the extent they conflict with these new rules: AOs 1999–17, 1998–22, 1996–1, 1993–18, 1982–20, 1980–116, 1979–80.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]**

The Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules follow court decisions that expand the definition of certain coordinated communications made in support of or in opposition to clearly identified federal candidates. The rules also permit, but do not require, small entities to make independent expenditures. Therefore, there will be no significant economic impact on a substantial number of small entities.

**List of Subjects**

*11 CFR Part 100*

Elections.

*11 CFR Part 109*

Elections, Reporting and recordkeeping requirements.

*11 CFR Part 110*

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* is amended to read as follows:

## PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

**Authority:** 2 U.S.C. 431, 434(a)(11), and 438(a)(8).

2. Section 100.16 is revised to read as follows:

**§ 100.16 Independent expenditure (2 U.S.C. 431(17)).**

The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of or in consultation with, or in concert with, or

at the request or suggestion of, a candidate or any agent or authorized committee of such candidate. A communication is ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23. *See* 11 CFR 109.1.

3. Section 100.23 is added to read as follows:

**§ 100.23 Coordinated General Public Political Communications.**

(a) *Scope.*

(1) This section applies to expenditures for general public political communications paid for by persons other than candidates, authorized committees, and party committees.

(2) Coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

(b) *Treatment of expenditures for general public political communications as expenditures and contributions.* Any expenditure for general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii).

(c) *Coordination with candidates and party committees.* An expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication—

(1) Is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and

(2) Is created, produced or distributed—

(i) At the request or suggestion of the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing;

(ii) After the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or

(iii) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee, a party committee, or the agent of such candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

(e) *Definitions.* For purposes of this section:

(1) *General public political communications* include those made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.

(2) *Clearly identified* has the same meaning as set forth in 11 CFR 100.17.

(3) *Agent* has the same meaning as set forth in 11 CFR 109.1(b)(5).

## PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

4. The authority citation for part 109 continues to read as follows:

**Authority:** 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

5. Section 109.1 is amended by revising paragraphs (a), (b)(4) and (d)(1) to read as follows:

**§ 109.1 Definitions (2 U.S.C. 431(17)).**

(a) *Independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) * * *

(4) A communication is ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(d)(1) The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless the dissemination, distribution, or republication of campaign materials is a coordinated general public political communication under 11 CFR 100.23

* * * * *

## PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

6. The authority citation for part 110 continues to read as follows:

**Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

7. Section 110.14 is amended by revising the introductory text to paragraphs (f)(2)(i) and (f)(2)(ii); paragraph (f)(3)(iii); the introductory text to paragraphs (i)(2)(i) and (i)(2)(ii); and paragraph (i)(3)(iii) to read as follows:

**§ 110.14 Contributions to and expenditures by delegates and delegate committees.**

* * * * *

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

(i) * * *

* * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated general public political communications under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

Dated: November 30, 2000.

**Darryl R. Wold,**

*Chairman, Federal Election Commission.*

[FR Doc. 00–31013 Filed 12–5–00; 8:45 am]

BILLING CODE 6715–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM179; Special Conditions No. 25–168–SC]**

## Special Conditions: Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B Series Airplanes as Modified by Duncan Aviation; High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes modified by Duncan Aviation. These modified airplanes will have a novel or unusual design feature(s) associated with new avionics/electronics and electrical systems that will perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 29, 2000. Comments must be received on or before January 22, 2001.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM179, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: Docket No. NM179. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the certification program for Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes, contact: Meghan Gordon, Federal Aviation Administration, Transport Airplane Directorate, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; fax (425) 227–1149.

For information on the general subject of HIRF, contact: Massoud Sadeghi, Federal Aviation Administration, Transport airplane Directorate, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2117; fax (425) 227–1320.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Although these special conditions are being issued as final special conditions without prior public notice, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to NM179.'' The postcard will be date stamped and returned to the commenter.

### Background

On September 13, 2000, and on September 20, 2000, Duncan Aviation, 15745 South Airport Road, Battle Creek, Michigan 49015, submitted applications to the FAA for two Supplemental Type Certificates (STC). These STC's are for modifying Gulfstream Aerospace Model G–1159, G–1159A, and G–1159B series airplanes to include:

- The Collins FDS–2000 Flight Display System; and
- Dual Collins AHS–3000A Altitude Heading Reference Systems.

The FDS–2000 system is a replacement of the existing electro-mechanical Attitude Directional Indicator (ADI) and Horizontal Situational Indicator (HSI) flight instruments. It also provides additional functional capability and redundancy in the system.

The AHS–3000A system is a replacement for the existing electro-mechanical vertical and directional gyros. It also provides additional functional capability and redundancy in the system.

The avionics/electronics and electrical systems installed in the Gulfstream Model G–1159, G–1159A, and G–1159B airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

The subject Gulfstream airplanes are T-tail, low swept-wing small transport category airplanes. The Model G–1159 airplane is powered by two Rolls Royce SPEY RB (163) 511–8 series engines mounted on pylons extending from the aft fuselage, and it has a maximum takeoff weight of 64,800 pounds. The Models G–1159A and G–1159B are slightly larger than the Model G–1159. These models are powered by two Rolls Royce SPEY RB (163–25) 511–8 series engines, and have a maximum takeoff

weight of 69,700 pounds. This series of airplanes operates with a 2-pilot crew and can hold up to 19 passengers.

**Type Certification Basis**

Under the provisions of 14 CFR § 21.101, Duncan Aviation must show that the Gulfstream Models G–1159, G–1159A, and G–1159B airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the modification. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A12EA are as follows:

*1. For the Gulfstream Model G–1159 Airplane*

- CAR 4b dated December 31, 1953, including Amendments 4b-1 through 4b-14;
- Special Regulations SR422B and SR450A;
- § 25.1325 (effective 2/1/65);
- § 25.175 (effective 3/1/65) in lieu of 4b.155(b);
- § 36.1(c)(2) for airplane serial numbers (S/N) 1 through 165 and 775 approved for a 62,000 lb. takeoff weight;
- 14 CFR Part 36, Appendix C, for airplane S/N 166 through 299, except 249, 252, and 775;
- Special Conditions in Attachment A of FAA letter to Grumman, dated 9/27/65;
- Exemption No. 695A, CAR 4b.437, ''Fuel Jettisoning System.''

*2. For the Model G–1159A Airplane*

- 14 CFR part 25 effective February 1, 1965, and Amendments 25–2 through 25–8, 25–10, 25–12, 25–16 through 25–22, 25–24, 25–26, 25–27, 25–29 through 25–34, 25–37, 25–40 (as applicable to a new APU installation);
- § 25.329 of Part 25 dated February 1, 1965 (as applied to a new autopilot installation);
- § 25.581 (lightning protection) of Amendment 25–23;
- § 25.771, Amendment 25–4. (A lockable door is not required between the pilot and passenger compartments.);
- § 25.994 (crashworthiness fuel system components);
- § 25.1309 of Amendment 25–41;
- Special Federal Aviation Regulation (SFAR) 27 through Amendment 2 (fuel venting emission);
- 14 CFR part 36 through Amendment 36–8 (noise requirements);
- Special Conditions contained in the FAA's letter to Grumman, dated 9/27/65, applicable to the Gulfstream Model G–1159 airplane, are also applicable to the Gulfstream Model G–1159A airplane, except that reference to ''4b.450'' in the ''Cooling Systems'' special conditions is replaced by ''FAR 25.1043 contained in Part 25 of the FAR, effective 2/1/65;''
- Special Conditions pertaining to dynamic gust loads contained in the enclosure to FAA AEA–212 letter, dated 7/22/80.

*3. For the Model G–1159B*

- *Fuselage, Empennage, Autopilot, and Noise:*
  - —Car 4b, dated December 31, 1953, including Amendments 4b-1 through 4b-14;
  - —CAR 4b.450, Cooling Systems;
  - —Special Regulation SR450A;
  - —§ 25.175 (effective 3/1/65) in lieu of CAR 4b.155(b);
  - —§ 25.771, Amendment 25–4. [A lockable door is not required between the pilot and passenger compartments.]
  - —§ 25.1325 (effective 2/1/65);
  - —§ 36.7(d)(3)(ii);
  - —Special Conditions in Attachment A of FAA letter to Grumman, dated 9/27/65.
- *Wing Assembly, Landing Gear, Fuselage, and Empennage Modifications:*
  - —14 CFR part 25, effective February 1, 1965, Amendments 25–2 through 25–8, 25–10, 25–12, 25–16 through 25–22, 25–24, 25–26, except § 25.1203(b)(3), 25–27, 25–29 through 25–31,25–34, 25–37, 25–40 (as applicable to a new APU installation);
  - —§ 25.581 (Lightning Protection) of Amendment 25–23;
  - —§ 25.771, Amendment 4 (A lockable door is not required between the pilot and passenger compartments.);
  - —§ 25.994 (Crashworthiness Fuel System Components);
  - —25.1309 of Amendment 25–41;
  - —§ 25.1329 (effective 2/1/65);
  - —SFAR 27 through Amendment 2 (Fuel Venting Emissions);
  - —Special Conditions contained in the FAA's letter to Grumman, dated 9/27/65, applicable to Gulfstream Model G–1159 airplane, are also applicable to the Gulfstream Model G–1159B airplane;
  - —Special Conditions pertaining to dynamic gust loads, contained in the enclosure to FAA letter AEA–212, dated 7/22/80, is applicable to the Model G–1159B airplane.

The special conditions approved in this document will form an additional part of the type certification basis for these airplanes.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for the Gulfstream Model G–1159, 11–59A, and G–1159B airplanes modified by Duncan Aviation because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation will incorporate new avionics/electronics and electrical systems that will perform critical functions. These systems include a new flight display system and a new attitude heading reference system. These systems may be vulnerable to HIRF external to the airplane.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of

the airplane, and the use of composite material in the airplane structure, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1. or, alternatively, paragraph 2., below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

*Or*

2. A threat external to the airframe for both of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

| Frequency | Field Strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz—100 kHz | 50 | 50 |
| 100 kHz—500 kHz | 50 | 50 |
| 500 kHz—2 MHz | 50 | 50 |
| 2 MHz—30 MHz | 100 | 100 |
| 30 MHz—70 MHz | 50 | 50 |
| 70 MHz—100 MHz | 50 | 50 |
| 100 MHz—200 MHz | 100 | 100 |
| 200 MHz—400 MHz | 100 | 100 |
| 400 MHz—700 MHz | 700 | 50 |
| 700 MHz—1 GHz | 700 | 100 |
| 1 GHz—2 GHz | 2000 | 200 |
| 2 GHz—4 GHz | 3000 | 200 |
| 4 GHz—6 GHz | 3000 | 200 |
| 6 GHz—8 GHz | 1000 | 200 |
| 8 GHz—12 GHz | 3000 | 300 |
| 12 GHz—18 GHz | 2000 | 200 |
| 18 GHz—40 GHz | 600 | 200 |

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified in Table 1 are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

## Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

## Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

As stated previously, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace Model G–1159, G–1159A, and G–1159B airplanes modified by Duncan Aviation:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 29, 2000.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–31085 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–27–AD; Amendment 39–12028; AD 2000–24–21]**

**RIN 2120–AA64**

# Airworthiness Directives; Siam Hiller Holdings, Inc. Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), for Siam Hiller Holdings, Inc. (Hiller), formerly Rogerson Hiller Corporation, Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 helicopters, that requires replacing all undrilled-shank bolts at pivoting joints in the control system linkage with drilled-shank bolts and installing castellated nuts and cotter pins. This amendment is prompted by an accident caused by separation of the control system linkage of a Model UH–12E helicopter. The actions specified by this AD are intended to prevent separation of the control system attachments at pivoting points and subsequent loss of control of the helicopter.

**DATES:** Effective January 10, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 10, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101, telephone (408) 384–4500, fax (408) 384–3100. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5322, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) for Hiller Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, and UH–12L4 helicopters was published in the **Federal Register** on August 31, 2000 (65 FR 52958). That action proposed to require replacing all undrilled-shank bolts at the pivoting joints in the control system linkage with drilled-shank bolts and installing castellated nuts and cotter pins.

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

The FAA estimates that 500 helicopters of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $150 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $795,000.

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 a new airworthiness directive to read as follows:

**2000–24–21 Siam Hiller Holdings, Inc.:** Amendment 39–12028. Docket No. 2000–SW–27–AD.

*Applicability:* Model UH–12, UH–12A, UH–12B, UH–12C, UH–12D, UH–12E, UH–12E–L, UH–12L, UH–12L4 helicopters, certificated in any category.

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

*Compliance:* Required at the next annual inspection or within 12 months, whichever occurs first, unless accomplished previously.

To prevent separation of the control system attachments at pivoting points and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace all undrilled-shank bolts at pivoting joints in the control system linkage with drilled-shank bolts, and install castellated nuts and cotter pins in accordance with Hiller Aircraft Corporation Service Bulletin No. 10–4, Revision 2, dated December 20, 1999.

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

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

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

(d) The installation of castellated nuts and cotter pins shall be done in accordance with Hiller Aircraft Corporation Service Bulletin No. 10–4, Revision 2, dated December 20, 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 Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101, telephone (408) 384–4500, fax (408) 384–3100. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 10, 2001.

Issued in Fort Worth, Texas, on November 14, 2000.

**Michele M. Owsley,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–30652 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–AWP–11]**

## Revision to the Legal Description of the Laughlin/Bullhead International Airport Class D Airspace Area, AZ

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the legal description of the Laughlin/Bullhead International Airport Class D airspace area, AZ, by including that airspace within a 4.2-mile radius of the Laughlin/Bullhead International Airport west of a line 1.8-miles west of and parallel to the north/south runway.

**EFFECTIVE DATE:** January 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Richard V. Coffin Jr., Airspace Specialist, Airspace Branch, AWP–520.9, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (301) 725–6533.

**SUPPLEMENTARY INFORMATION:**

## History

The Airspace Branch in the Western-Pacific Region received a request from the Laughlin/Bullhead International Airport air traffic control tower manager to include the airspace west of the airport beyond 1.8 miles of the north/south runway and within a 4.2 mile radius of the airport.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, through September 15, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

## The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations revises the legal description of the Laughlin/Bullhead International Airport Class D airspace area, AZ, by including that airspace within a 4.2-mile radius of the Laughlin/Bullhead International Airport west of a line 1.8 miles west of and parallel to the north/south runway. This action will change the actual dimensions, configuration, or operating requirements of the Laughlin/Bullhead International Airport Class D airspace area, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRPSACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 *Class D Airspace*

* * * * *

AWP AZ D Bullhead City, AZ [Revised]

Laughlin/Bullhead International Airport, AZ

(Lat. 35°09′ 27″N, Long. 114°33′ 34″W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of the Laughlin/Bullhead International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on November 21, 2000.

**John Clancy,**

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 00–31087 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Airspace Docket No. 00–ACE–23]**

**RIN 2120–AA66**

## Amendment of Time of Use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood; MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the times of use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood, MO. Specifically, this action reduces and/or increases the published times and/or days the restricted areas are in use. The FAA is taking this action in response to the United States Army's (USA) increased training requirements.

**EFFECTIVE DATE:** 0901 UTC, January 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 31, 2000, the FAA proposed to amend 14 CFR part 73 to amend the times of use for Restricted Areas R–4501A, B, C, D, and E, Fort Leonard Wood, MO (65 FR 52961). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The Department of Defense in a continuing need to meet its added national defense responsibilities has increased its training requirements of the USA Reserve and National Guard resources in many areas of the United States. One of the locations where this training has been increased is at Fort Leonard Wood, MO. This increase in training requires modification of the times of use for R–4501 and its subdivisions. Therefore, the USA has requested that the FAA amend the times and days of use for R–4501A, B, C, D, and E. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.45 of part 73 was republished in FAA Order 7400.8H dated September 1, 2000.

## The Rule

This amendment to 14 CFR part 73 modifies the times of use of R–4501 and

its subdivisions over Fort Leonard Wood, MO. Specifically, R–4501A is activated thirty minutes earlier and deactivated three hours later. Additionally, R–4501B is activated on the same schedule but deactivated four hours later. The day schedule (Monday-Saturday) remains unchanged.

Also, R–4501C and D are activated two hours later Monday-Friday and deactivated three hours later than the current designation on Monday and two hours earlier Tuesday-Friday. Saturday is no longer designated as an active day unless done so by NOTAM 24 hours in advance. In addition, R–4501E is activated on the same schedule as R–4501C and D. The FAA is taking this action at the request of the USA to meet the increasing training efforts of the USA at Fort Leonard Wood, MO, and to better depict more realistic operational times of use of the restricted areas. Section 73.45 of 14 CFR part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This action reduces and/or increases the published times and/or days the restricted areas are in use. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

### List of Subjects on 14 CFR Part 73

Airspace, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

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

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 73.45 [Amended]

2. Section 73.45 is amended as follows:

* * * * *

#### R–4501A Fort Leonard Wood West, MO [Amended]

By removing the words ''Time of Designation. 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.'' and inserting the words ''Time of Designation. 0630–2100 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.''

#### R–4501B Fort Leonard Wood East, MO [Amended]

By removing the words ''**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.'' and inserting the words ''**TIME OF DESIGNATION.** 0630–2200 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.''

#### R–4501C Fort Leonard Wood, MO [Amended]

By removing the words ''**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.'' and inserting the words ''**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance.''

#### R–4501D Fort Leonard Wood, MO [Amended]

By removing the words ''**TIME OF DESIGNATION.** 0700–1800 Monday-Saturday; other times by NOTAM issued at least 24 hours in advance.'' and inserting the words ''**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance.''

#### R–4501E Fort Leonard Wood, MO [Amended]

By removing the words ''**TIME OF DESIGNATION.** As specified by NOTAM at least 24 hours in advance.'' and inserting the words ''**TIME OF DESIGNATION.** 0900–2100 Monday; 0900–1600 Tuesday-Friday; other times by NOTAM issued at least 24 hours in advance.''

* * * * *

Issued in Washington, DC, on November 30, 2000.

**Reginald C. Matthews,**

*Manager Airspace and Rules Division.*

[FR Doc. 00–31086 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 31

**[TD 8909]**

**RIN 1545–AY46**

## Federal Employment Tax Deposits—De Minimis Rule

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary and final regulations.

**SUMMARY:** This document contains temporary and final regulations relating to the deposit of Federal employment taxes. The regulations change the de minimis deposit rule for quarterly and annual return periods. The regulations affect taxpayers required to make deposits of Federal employment taxes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** *Effective date:* These regulations are effective December 6, 2000.

*Applicability date:* For dates of applicability, see § 31.6302–1T(f)(4).

**FOR FURTHER INFORMATION CONTACT:** Brinton T. Warren, (202) 622–4940 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at the Source. Section 31.6302–1(f)(4) provides that if the total amount of accumulated employment taxes for a return period is less than $1,000 and the amount is fully deposited or remitted with a timely filed return for the quarter, the amount deposited or remitted will be deemed to be timely deposited.

The temporary regulations change the $1,000 threshold to $2,500. Thus, a taxpayer that has accumulated employment taxes of less than $2,500 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full

liability with a timely filed return for the return period.

The *de minimis* threshold is being raised as part of the IRS and Treasury's continued efforts to reduce burden on the small business community. On June 16, 1998, temporary regulations (TD 8771) that raised the de minimis threshold from $500 to $1,000 were published in the **Federal Register** (63 FR 32735). This increase of the threshold to $1,000 was made final on June 17, 1999, (TD 8822) in regulations published in the **Federal Register** (64 FR 32408).

Having conducted further study, the IRS now seeks additional changes in deposit requirements to reduce taxpayer burden. The IRS and Treasury have determined that another increase in the *de minimis* threshold is a simple and straightforward step that will reduce burden on small businesses.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

**Drafting Information**

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Paragraph 1.** The authority citation for part 31 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 31.6302–1T also issued under 26 U.S.C. 6302(a) and (c). * * *

**Par. 2.** In § 31.6302–1, a new sentence is added at the end of paragraph (f)(4) to read as follows:

**§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.**

* * * * *

(f) * * *

(4) * * * For guidance regarding de minimis amounts for quarterly or annual return periods beginning on or after January 1, 2001, see § 31.6302–1T(f)(4).

* * * * *

**Par. 3.** Section 31.6302–1T is added to read as follows:

**§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).**

(a) through (f)(3). [Reserved] For further guidance, see § 31.6302–1(a) through (f)(3).

(f)(4) *De Minimis rule.* For quarterly and annual return periods beginning on or after January 1, 2001, if the total amount of accumulated employment taxes for the return period is less than $2,500 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(f)(5) through (n). [Reserved] For further guidance, see § 31.6302–1(f)(5) through (n).

Approved: November 21, 2000.

**Charles O. Rossotti,**

*Commissioner of Internal Revenue.*

**Jonathan Talisman,**

*Acting Assistant Secretary for Tax Policy.*

[FR Doc. 00–30791 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD 05–00–053]**

## Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.511 for the Eastport Yacht Club Lighted Boat Parade, a marine event to be held December 9, 2000, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

**DATES:** 33 CFR 100.511 is effective from 4:45 p.m. to 9:15 p.m. on December 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

**SUPPLEMENTARY INFORMATION:** The Eastport Yacht Club will sponsor a lighted boat parade on the waters of the Severn River and Spa Creek at Annapolis, Maryland. The event will consist of approximately 50 vessels, ranging in length from 20 to 55 feet, traveling at slow speed along two separate parade routes in Annapolis Harbor. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: November 21, 2000.

**T.C. Paar,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–31045 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–00–247]**

## Mystic River, CT, Drawbridge Operation Regulations:

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of AMTRAK railroad bridge, at mile 2.4, across the Mystic River at Mystic, Connecticut. This deviation allows the bridge owner to open the bridge only three times a day at 6:30 a.m. to 7:30 a.m., 12:30 p.m. to 1 p.m., and 6:15 p.m. to 7 p.m. from December 11, 2000 to December 13, 2000. This action is necessary to facilitate replacement of the pinion at the bridge.

**EFFECTIVE DATES:** This deviation is effective from December 11, 2000, to December 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The AMTRAK railroad bridge, at mile 2.4, across the Mystic River, has a vertical clearance of 4 feet at mean high water, and 7 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.211(a).

The bridge owner requested a temporary deviation from the drawbridge operating regulations to open the bridge only three times a day at 6:30 a.m. to 7:30 a.m., 12:30 p.m. to 1 p.m., and 6:15 p.m. to 7 p.m., from December 11, 2000 to December 13, 2000, to facilitate the replacement of the pinion at the bridge. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 24, 2000.

**Gerald M. Davis,**

*Captain, U.S. Coast Guard, Acting Commander, First Class Guard District.*

[FR Doc. 00–31096 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–M

## POSTAL SERVICE

## 39 CFR Part 20

## Global Express Guaranteed

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** On April 19, 1999, the Postal Service published an interim rule introducing Priority Mail Global Guaranteed service on a test basis. The Postal Service has since amended that interim rule on four occasions, with the last amendment being announced on September 29, 2000, and amending the interim rule to rename the service Global Express Guaranteed service (GXG), establishing it as a permanent international service and expanding the service to include a new classification for Non-Document (merchandise) shipments. That amendment to the interim rule also established and published separate rates for the Non-Document service. The Postal Service hereby gives notice that it is implementing the interim rule as amended on a permanent basis.

**EFFECTIVE DATE:** November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Malcolm E. Hunt, (770) 360–1104.

**SUPPLEMENTARY INFORMATION:** On April 19, 1999, the Postal Service announced in the **Federal Register** (64 FR 19039–19042) the introduction of Priority Mail Global Guaranteed (PMGG) service on an interim basis. With PMGG, the USPS provided customers with a fully featured premium international service for documents with full track and trace capability. This service was initially available from 3,000 retail locations for delivery to a total of 19 countries.

On November 4, 1999, the Postal Service announced in the **Federal Register** (64 FR 60106–60109) the expansion of PMGG service to permit acceptance at a total of 10,000 retail locations, with destination locations expanded to 65 countries and territories.

On May 26, 2000, the Postal Service announced in the **Federal Register** (65 FR 34096–34101) the further expansion of PMGG service to a total of 202 destinating countries and territories. A revised rate structure was also introduced.

On August 28, 2000, the Postal Service announced in the **Federal Register** (65 FR 52023–52028) a further expansion of PMGG service. The number of retail locations was increased to a total of 20,000, Document service rates were adjusted, optional document reconstruction insurance was increased to $2499, and delivery service was extended to China. An incorrect listing of three-digit ZIP Codes was included in the list of participating post offices in this rule. The correct list of participating post offices by three-digit ZIP Code is incorporated in the final rule.

On September 29, 2000, the Postal Service announced in the **Federal Register** (65 FR 58350–58359) a further expansion of PMGG service based on the successive and successful expansions of PMGG service. The Postal Service established it as a permanent international mail service. To effectuate this change, the Postal Service changed the name of the service to Global Express Guaranteed (GXG) and completed the expansion to include a new classification for merchandise shipments. GXG now consists of two mail classifications:

a. GXG Document service
b. GXG Non-Document service

The GXG Document service mail classification is for shipments that contain only documents and general correspondence for which no duty is assessed by the customs authority of the destinating country. This mail classification is a designated letter mail class pursuant to 39 U.S.C. 3623(d) and, as such, is sealed against inspection by the Postal Service. These Document service shipments may be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The rate structure for Document service is separate and distinct from the rate structure for Non-Document service.

The GXG Non-Document service mail classification is for shipments that do not contain documents or general correspondence and for which duty may be assessed by the customs authority of the destinating country. Merchandise and all other dutiable items may be shipped using only this GXG classification. As such, this mail classification is not a letter mail class pursuant to 39 U.S.C. 3623(d). In order to provide for expedited customs clearance of these dutiable shipments, Non-Document service shipments will be subject to inspection by the Postal Service and its designated agents for purposes of air security and to determine that the contents are eligible for shipment via Non-Document service and that the contents are adequately

declared on the GXG Air Waybill/Shipping Invoice to permit expedited customs clearance. These Non-Document service shipments may also be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The rate structure for Non-Document service is separate and distinct from the rate structure for Document service and reflects the generally higher costs inherent with handling dutiable shipments. Non-Document service is not available to some countries to which Document service is provided. See the listing of destinating countries in International Mail Manual (IMM) 215.32 below for specific availability.

This separate mail classification treatment for GXG Document and Non-Document services is also reflected in the proposed changes to the Postal Service's Administrative Support Manual (ASM) provisions regarding mail security.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service solicited comment on the amendment to the interim rule. One comment was received regarding the different rate structure for the Document and Non-Document services, specifically that a half-pound rate is not available for Non-Document shipments. These rate structures were developed for GXG based upon the Postal Service's required cost coverage for providing these services and upon industry cost margins. A comment was also received regarding the lack of availability of the service in some post offices. GXG is available in approximately 20,000 post offices. Those offices were chosen based upon market research and the Postal Service's current logistical infrastructure to support the network.

Through the implementation of the interim rule, as amended, the Postal Service amends the International Mail Manual and the Administrative Support Manual as set forth below, both of which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

Transmittal letters changing the relevant pages in the International Mail Manual and the Administrative Support Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

On or about September 26, 2000, the Postal Service announced in the **Federal Register** a proposed rule which would amend and renumber provisions in the International Mail Manual. If that rule is adopted, GXG will be found in Section 210 of Chapter 2 of the International Mail Manual.

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal service.

## PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended as follows:

**2 CONDITIONS FOR MAILING**

*210 Express Mail International Service*

* * * * *

*215 Global Express Guaranteed*

**215.1 Description**

**215.11 General**

Global Express Guaranteed (GXG) service is an international expedited delivery service provided through an alliance with DHL Worldwide Express, Inc. It provides reliable, high-speed, guaranteed, and time-definite service from selected post offices in the United States to a large number of international destinations. (Consult Countries and Cities Served Section of the *Global Express Guaranteed Service Guide* for destination service commitments.) GXG delivery service is guaranteed to meet the specified service standards or the postage paid may be refunded. Liability insurance is provided for lost or damaged shipments. See section 215.54 for an explanation of limits of liability.

**215.12 Allowable Contents**

Documents and general correspondence (non-dutiable items), and non-documents (all dutiable items including merchandise) may be shipped using GXG service. See 215.2 for classification and rate treatment of specific shipments based on content. The allowable contents for GXG shipments may also be restricted by the destinating country. Refer to the *Global Express Guaranteed Service Guide* for the definition of allowable contents for each destination country. Senders are responsible for determining if their item is allowable despite any statement made in the *Global Express Guaranteed Service Guide,* on the GXG Web Site, or by a postal employee or the Postal Service's agents.

**215.2 Mail Classifications**

**215.21 Global Express Guaranteed Document Service**

The GXG Document service mail classification is for shipments that contain only documents and general correspondence for which no duty is assessed by the customs authority of the destinating country (non-dutiable shipments). Packages shipped by GXG Document service are sealed against inspection by the Postal Service. These Document service shipments may be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. The postage rates applicable to Document service shipments are set forth in 215.61 and are separate and distinct from the postage rates for Non-Document service.

**215.22 Global Express Guaranteed Non-Document Service**

The GXG Non-Document service mail classification is for shipments that do not contain documents or general correspondence and for which duty may be assessed by the customs authority of the destinating country. Merchandise and all other dutiable items may be shipped using only this GXG classification. Non-Document service shipments will be subject to inspection by the Postal Service and its designated agents for purposes of air security and to determine that the contents are eligible for shipment via Non-Document service and that the contents are adequately declared on the GXG Air Waybill/Shipping Invoice to permit expedited customs clearance. These Non-Document service shipments may also be subject to inspection in the destinating country for purposes of compliance with the customs requirements of the destinating country. Non-Document service is not available to some countries to which Document service is provided. See the listing of destinating countries in 215.32 for specific availability. The postage rates applicable to Non-Document service shipments are set forth in 215.62 and are separate and distinct from the postage rates for Document service.

**215.3 Service Areas**

**215.31 U.S. Origins**

GXG items must be entered through selected post offices that are located in the following ZIP Code areas. Check with your local post office or review the *Global Express Guaranteed Service Guide* for a participating post office near you.

| State | ZIP code areas |
|---|---|
| AL—Alabama | 352, 356–358, 361–362, 366, 368 |
| AR—Arkansas | 722–723 |
| AZ—Arizona | 850, 852–853, 857 |
| CA—California | 900, 902–908, 910–918, 920–921, 926–928, 934, 936–937, 939–941, 943–951, 954 |
| CO—Colorado | 800–803, 805–806, 808–810 |
| CT—Connecticut | 060–069 |
| DC—District of Columbia | 200, 202–203, 205 |
| DE—Delaware | 197–199 |
| FL—Florida | 320–323, 326–338, 342, 344, 346–347, 349 |
| GA—Georgia | 299–319 |
| IA—Iowa | 500–507, 510–511, 515–516, 520, 522–528 |
| IL—Illinois | 600–620, 622, 625–627, 629 |
| IN—Indiana | 460–479 |
| KS—Kansas | 660–662, 667, 674, 676 |
| KY—Kentucky | 400–406, 410–416, 421–424, 427 |
| LA—Louisiana | 700–701, 703–704, 707–708 |
| MA—Massachusetts | 010–027 |
| MD—Maryland | 206–212, 214, 217, 219 |
| ME—Maine | 039–041 |
| MI—Michigan | 480–497 |
| MN—Minnesota | 550–551, 553–554, 558–563 |
| MO—Missouri | 630–631, 633, 636–641, 644–648, 654–658 |
| MS—Mississippi | 383, 386–392, 394–397 |
| MT—Montana | 591 |
| NC—-North Carolina | 270–282, 286 |
| NE—Nebraska | 680–681, 685–687 |
| NH—New Hampshire | 010–011, 030–034, 036–038 |
| NJ—New Jersey | 070–089 |
| NM—New Mexico | 871 |
| NY—New York | 100–101, 103–149 |
| OH—Ohio | 430–458 |
| OK—Oklahoma | 730–731, 734–738, 740–741, 743–748 |
| OR—Oregon | 972 |
| PA—Pennsylvania | 150–168, 170–176, 178–179, 189–191, 193–196 |
| PR—Puerto Rico | 006–007, 009 |
| RI—Rhode Island | 028–029 |
| SC—South Carolina | 297–299 |
| SD—South Dakota | 570–571 |
| TN—Tennessee | 370–374, 376–385 |
| TX—Texas | 750–756, 759–764, 768–770, 772–778, 780–782, 784, 786–788, 791, 794–796, 799 |
| UT—Utah | 840–841, 843–847 |
| VA—Virginia | 201, 220–227, 230–239 |
| VI—Virgin Islands | 008 |
| VT—Vermont | 054, 056 |
| WA—Washington | 980–985, 988–989 |
| WI—Wisconsin | 530–532, 534, 540, 546–548 |
| WV—West Virginia | 250–257, 260, 267 |
| WY—Wyoming | 820 |

### 215.32 Destinating Countries and Rate Groups

GXG service is available to the following destinating countries and territories. For rate purposes, countries have been placed into one of eight rate groups.

| Country | Document service rate group | Non-document service rate group |
|---|---|---|
| Afghanistan | * | * |
| Albania | 8 | 8 |
| Algeria | 8 | 8 |
| Andorra | 6 | 6 |
| Angola | 8 | 8 |
| Anguilla | 7 | 7 |
| Antigua & Barbuda | 7 | 7 |
| Argentina | 5 | 5 |
| Armenia | 8 | 8 |
| Aruba | 7 | 7 |
| Ascension | * | * |
| Australia | 4 | 4 |
| Austria | 6 | 6 |
| Azerbaijan | 8 | 8 |
| Bahamas | 7 | 7 |
| Bahrain | 4 | 4 |

| Country | Document service rate group | Non-document service rate group |
|---|---|---|
| Bangladesh | 4 | 4 |
| Barbados | 7 | 7 |
| Belarus | 8 | 8 |
| Belgium | 3 | 3 |
| Belize | 5 | 5 |
| Benin | 8 | 8 |
| Bermuda | 7 | 7 |
| Bhutan | 5 | 5 |
| Bolivia | 5 | 5 |
| Bosnia-Herzegovina | 8 | 8 |
| Botswana | 8 | 8 |
| Brazil | 5 | 5 |
| British Virgin Islands | 7 | 7 |
| Brunei Darussalam | 8 | 8 |
| Bulgaria | 8 | 8 |
| Burkina Faso | 8 | 8 |
| Burma (Myanmar) | 8 | 8 |
| Burundi | 8 | 8 |
| Cambodia | 8 | 8 |
| Cameroon | 8 | 8 |
| Canada | 1 | 1 |
| Cape Verde | 8 | 8 |
| Cayman Islands | 7 | 7 |
| Central African Republic | 8 | 8 |
| Chad | 8 | 8 |
| Chile | 5 | 5 |
| China | 4 | 4 |
| Colombia | 5 | 5 |
| Comoros | 8 | 8 |
| Congo, Democratic Republic of the | 8 | 8 |
| Congo, Republic of the (Brazzaville) | 8 | 8 |
| Costa Rica | 5 | 5 |
| Cote d'Ivoire (Ivory Coast) | 8 | 8 |
| Croatia | 8 | 8 |
| Cuba | 8 | * |
| Cyprus | 4 | 4 |
| Czech Republic | 8 | 8 |
| Denmark | 6 | 6 |
| Djibouti | 8 | 8 |
| Dominica | 7 | 7 |
| Dominican Republic | 7 | 7 |
| Ecuador | 5 | 5 |
| Egypt | 4 | * |
| El Salvador | 5 | 5 |
| Equatorial Guinea | 8 | 8 |
| Eritrea | 8 | 8 |
| Estonia | 8 | 8 |
| Ethiopia | 8 | 8 |
| Falkland Islands | 5 | 5 |
| Faroe Islands | 6 | 6 |
| Fiji | 5 | 5 |
| Finland | 6 | 6 |
| France | 3 | 3 |
| French Guiana | 5 | * |
| French Polynesia | 8 | 8 |
| Gabon | 8 | 8 |
| Gambia | 8 | 8 |
| Georgia, Republic of | 8 | 8 |
| Germany | 3 | 3 |
| Ghana | 8 | 8 |
| Gibraltar | 6 | 6 |
| Great Britain & Northern Ireland | 3 | 3 |
| Greece | 6 | 6 |
| Greenland | 6 | 6 |
| Grenada | 7 | 7 |
| Guadeloupe | 7 | 7 |
| Guatemala | 5 | 5 |
| Guinea | 8 | 8 |
| Guinea-Bissau | 8 | 8 |
| Guyana | 5 | 5 |
| Haiti | 7 | 7 |
| Honduras | 5 | 5 |

| Country | Document service rate group | Non-document service rate group |
|---|---|---|
| Hong Kong | 3 | 3 |
| Hungary | 8 | 8 |
| Iceland | 6 | 6 |
| India | 4 | 4 |
| Indonesia | 4 | 4 |
| Iran | 4 | * |
| Iraq | * | * |
| Ireland (Eire) | 3 | 3 |
| Israel | 4 | 4 |
| Italy | 3 | 3 |
| Jamaica | 7 | 7 |
| Japan | * | * |
| Jordan | 4 | 4 |
| Kazakhstan | 8 | 8 |
| Kenya | 8 | 8 |
| Kiribati | 8 | 8 |
| Korea, Democratic People's Republic of (North) | * | * |
| Korea, Republic of (South) | 4 | 4 |
| Kuwait | 4 | 4 |
| Kyrgyzstan | 8 | 8 |
| Laos | 8 | 8 |
| Latvia | 8 | 8 |
| Lebanon | 4 | 4 |
| Lesotho | 8 | 8 |
| Liberia | 8 | 8 |
| Libya | * | * |
| Liechtenstein | 6 | 6 |
| Lithuania | 8 | 8 |
| Luxembourg | 3 | 3 |
| Macao | 3 | 3 |
| Macedonia, Republic of | 8 | 8 |
| Madagascar | 8 | 8 |
| Malawi | 8 | 8 |
| Malaysia | 4 | 4 |
| Maldives | 8 | 8 |
| Mali | 8 | 8 |
| Malta | 6 | 6 |
| Martinique | 7 | 7 |
| Mauritania | 8 | 8 |
| Mauritius | 8 | 8 |
| Mexico | 2 | 2 |
| Moldova | 8 | 8 |
| Mongolia | 8 | 8 |
| Montserrat | 7 | 7 |
| Morocco | 8 | 8 |
| Mozambique | 8 | 8 |
| Namibia | 8 | 8 |
| Nauru | 8 | 8 |
| Nepal | 8 | 8 |
| Netherlands | 3 | 3 |
| Netherlands Antilles | 7 | 7 |
| New Caledonia | 5 | 5 |
| New Zealand | 4 | 4 |
| Nicaragua | 5 | 5 |
| Niger | 8 | 8 |
| Nigeria | 8 | 8 |
| Norway | 6 | 6 |
| Oman | 4 | 4 |
| Pakistan | 4 | 4 |
| Panama | 5 | 5 |
| Papua New Guinea | 5 | 5 |
| Paraguay | 5 | 5 |
| Peru | 5 | 5 |
| Philippines | 4 | 4 |
| Pitcairn Island | * | * |
| Poland | 8 | 8 |
| Portugal | 6 | 6 |
| Qatar | 4 | 4 |
| Reunion | 8 | 8 |
| Romania | 8 | 8 |
| Russia | 8 | 8 |
| Rwanda | 8 | 8 |

| Country | Document service rate group | Non-document service rate group |
|---|---|---|
| St. Christopher (St. Kitts) & Nevis | 7 | 7 |
| Saint Helena | * | * |
| Saint Lucia | 7 | 7 |
| Saint Pierre & Miquelon | 1 | 1 |
| Saint Vincent & Grenadines | 7 | 7 |
| San Marino | 3 | 3 |
| Sao Tome & Principe | 8 | 8 |
| Saudi Arabia | 4 | 4 |
| Senegal | 8 | 8 |
| Serbia-Montenegro (Yugoslavia) | 8 | 8 |
| Seychelles | 8 | 8 |
| Sierra Leone | 8 | 8 |
| Singapore | 3 | 3 |
| Slovak Republic (Slovakia) | 8 | 8 |
| Slovenia | 8 | 8 |
| Solomon Islands | 8 | 8 |
| Somalia | 8 | 8 |
| South Africa | 8 | 8 |
| Spain | 6 | 6 |
| Sri Lanka | 4 | 4 |
| Sudan | * | * |
| Suriname | 5 | 5 |
| Swaziland | 8 | 8 |
| Sweden | 6 | 6 |
| Switzerland | 6 | 6 |
| Syrian Arab Republic (Syria) | 4 | * |
| Taiwan | 3 | 3 |
| Tajikistan | 8 | 8 |
| Tanzania | 8 | 8 |
| Thailand | 4 | 4 |
| Togo | 8 | 8 |
| Tonga | 8 | 8 |
| Trinidad & Tobago | 7 | 7 |
| Tristan da Cunha | * | * |
| Tunisia | 8 | 8 |
| Turkey | 4 | 4 |
| Turkmenistan | 8 | 8 |
| Turks & Caicos Islands | 7 | 7 |
| Tuvalu | 8 | 8 |
| Uganda | 8 | 8 |
| Ukraine | 8 | 8 |
| United Arab Emirates | 4 | 4 |
| Uruguay | 5 | 5 |
| Uzbekistan | 8 | 8 |
| Vanuatu | 5 | 5 |
| Vatican City | 3 | 3 |
| Venezuela | 5 | 5 |
| Vietnam | 4 | 4 |
| Wallis & Futuna Islands | 4 | 4 |
| Western Samoa | 4 | 4 |
| Yemen | 4 | 4 |
| Zambia | 8 | 8 |
| Zimbabwe | 8 | 8 |

*No service.

GXG service is available to all locations that are referenced in the Individual Country Listings *except for the following:*

a. Afghanistan
b. Ascension
c. Iraq
d. Japan
e. Korea, Democratic People's Republic of (North)
f. Libya
g. Pitcairn Island
h. Saint Helena
i. Sudan
j. Tristan de Cunha

The following countries are limited to *GXG Document service only:*

a. Cuba
b. Egypt
c. French Guiana
d. Iran
e. Syrian Arab Republic (Syria)

**215.4 Service Guarantee**

**215.41 General**

The Postal Service guarantees delivery within the service standards specified in the *Global Express Guaranteed Service Guide* or the sender may be entitled to a full refund of the postage paid. For the purpose of the service guarantee, the date and time of delivery, attempted delivery, or availability for delivery constitutes delivery.

**215.42 Transit Days for Non-Document Service**

For GXG Non-Document service, total transit days may be affected by general

customs delays, specific customs commodity delays, holidays observed in the destinating country, and other factors beyond the Postal Service's control. See Terms and Conditions on the GXG Air Waybill/Shipping Invoice or in the Global Express Guaranteed Service Guide for details.

### 215.5 Inquiries, Postage Refunds, and Indemnity Claims

#### 215.51 Inquiries

Inquiries concerning the delivery of GXG items are made by calling 1–800–222–1811 or through the Internet at *http://www.usps.com/gxg.*

#### 215.52 Postage Refunds

Postage may be refunded if a shipment tendered at a designated post office before the specified deposit time is not delivered or if delivery is not attempted before 5:00 p.m. local time in the delivery location in accordance with the guaranteed delivery standards in the *Global Express Guaranteed Service Guide.* The mailer may file requests for postage refunds only by contacting a Customer Service Representative at 1–800–222–1811. The original receipt of the GXG Air Waybill/Shipping Invoice is required when filing a claim for a postage refund. Requests for postage refunds must be made no later than 30 days from the date of shipment. The GXG Customer Service Office will adjudicate refunds for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

Refunds will not be made if delivery was attempted but could not be made, if the delivery address was incomplete or inaccurate, or if the shipment was delayed by circumstances outside the control of the Postal Service or its agents (as defined in the *Global Express Guaranteed Service Guide*).

#### 215.53 Indemnity Claims

#### 215.531 Claims for Document Service Shipments

If a Document service shipment is lost or damaged, the sender may file a claim for document reconstruction costs, subject to 215.54. All claims must be initiated within 30 days of the shipment date by contacting a Customer Service Representative at 1–800–222–1811; this representative will provide more details on how to file a claim. The original receipt of the GXG Air Waybill/Shipping Invoice must be included when filing a claim. Consult the *Global Express Guaranteed Service Guide* for limitations and restrictions on indemnity payments for GXG items. The GXG Customer Service Office will adjudicate claims for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

#### 215.532 Claims for Non-Document Service Shipments

If a Non-Document service shipment is lost or damaged, the sender may file a claim for the declared value of the shipment costs, subject to 215.54. All claims must be initiated within 30 days of the shipment date by contacting a Customer Service Representative at 1–800–222–1811; this representative will provide more details on how to file a claim. The original receipt of the GXG Air Waybill/Shipping Invoice must be included when filing a claim. Consult the *Global Express Guaranteed Service Guide* for limitations and restrictions on indemnity payments for GXG items. The GXG Customer Service Office will adjudicate claims for GXG at 1–800–222–1811. Final approval and payment will be made by the Postal Service.

#### 215.54 Extent of Postal Service Liability for Lost or Damaged Contents

#### 215.541 Document Service Shipments

Liability for a lost or damaged Document service shipment is limited to the lowest of the following:

a. $100 or the amount of additional optional insurance purchased.
b. The actual amount of the loss or damage.
c. The actual value of the contents.

''Actual value'' means the lowest cost of replacing, reconstructing, or reconstituting the Allowable Contents of the shipment (determined at the time and place of acceptance).

#### 215.542 Non-Document Service Shipments

Liability for a lost or damaged Non-Document service shipment is limited to the lowest of the following:

a. $100 or the amount of additional optional insurance purchased.
b. The actual amount of the loss or damage.
c. The actual value of the contents.

''Actual value'' means the lowest cost of replacing, reconstructing, or reconstituting the Allowable Contents of the shipment (determined at the time and place of acceptance).

### 215.55 Insurance

#### 215.551 Insurance for Document Service Shipments

Document reconstruction insurance (this is the reasonable costs incurred in reconstructing duplicates of nonnegotiable documents mailed), up to $100 per shipment, is included at no additional charge. Additional document reconstruction insurance may be purchased for Document service shipments, as outlined in section 215.553, not to exceed the total cost of reconstruction, $2,499 or a lesser amount as limited by country, content, or value. *Coverage, terms, and limitations are subject to change.*

#### 215.552 Insurance for Non-Document Service Shipments

Non-Document insurance for loss, damage, or rifling, up to $100 per shipment, is included at no additional charge. Additional Non-Document insurance may be purchased for shipments, as outlined in section 215.553, not to exceed the total declared shipment value, $2,499 or a lesser amount as limited by country, content or value. *Coverage, terms, and limitations are subject to change.*

#### 215.553 Insurance Fees

| Insurance amount | Fee |
|---|---|
| $100 | No Fee |
| 200 | $0.70 |
| 300 | 1.40 |
| 400 | 2.10 |
| 500 | 2.80 |
| For document reconstruction insurance or Non-Document insurance coverage above $500, add $0.70 per $100 or fraction thereof, up to a maximum of $2,499 per shipment. | |
| 2,499 | 16.80 |

BILLING CODE 7710–12–U

**215.6 Postage**

**215.61 Document Service Rates/Groups**

| Weight Not Over (Lbs.) | Rate Group 1 | Rate Group 2 | Rate Group 3 | Rate Group 4 | Rate Group 5 | Rate Group 6 | Rate Group 7 | Rate Group 8 |
|---|---|---|---|---|---|---|---|---|
| 0.5 | $19 | $20 | $24 | $29 | $40 | $28 | $24 | $60 |
| 1 | 28 | 28 | 30 | 38 | 46 | 41 | 35 | 68 |
| 2 | 33 | 35 | 38 | 47 | 56 | 51 | 41 | 79 |
| 3 | 35 | 41 | 45 | 54 | 70 | 57 | 48 | 91 |
| 4 | 38 | 45 | 53 | 61 | 84 | 63 | 54 | 102 |
| 5 | 41 | 50 | 61 | 68 | 97 | 70 | 60 | 114 |
| 6 | 43 | 53 | 67 | 75 | 110 | 75 | 65 | 126 |
| 7 | 46 | 56 | 71 | 81 | 122 | 81 | 70 | 138 |
| 8 | 48 | 60 | 75 | 88 | 134 | 86 | 74 | 150 |
| 9 | 50 | 63 | 80 | 95 | 147 | 91 | 79 | 162 |
| 10 | 53 | 65 | 84 | 99 | 156 | 97 | 82 | 170 |
| 11 | 55 | 68 | 87 | 104 | 166 | 100 | 86 | 181 |
| 12 | 57 | 71 | 91 | 110 | 176 | 104 | 90 | 193 |
| 13 | 60 | 74 | 94 | 115 | 186 | 108 | 94 | 205 |
| 14 | 62 | 76 | 98 | 120 | 196 | 112 | 98 | 216 |
| 15 | 64 | 79 | 101 | 125 | 205 | 116 | 102 | 228 |

| Weight Not Over (Lbs.) | Rate Group 1 | Rate Group 2 | Rate Group 3 | Rate Group 4 | Rate Group 5 | Rate Group 6 | Rate Group 7 | Rate Group 8 |
|---|---|---|---|---|---|---|---|---|
| 16 | 67 | 82 | 104 | 131 | 214 | 120 | 106 | 239 |
| 17 | 69 | 84 | 108 | 136 | 222 | 124 | 110 | 250 |
| 18 | 71 | 87 | 111 | 141 | 229 | 128 | 114 | 261 |
| 19 | 74 | 90 | 115 | 146 | 237 | 132 | 118 | 272 |
| 20 | 76 | 92 | 118 | 151 | 244 | 136 | 122 | 283 |
| 21 | 78 | 95 | 121 | 156 | 251 | 139 | 126 | 292 |
| 22 | 80 | 97 | 125 | 161 | 259 | 143 | 130 | 301 |
| 23 | 82 | 100 | 128 | 166 | 266 | 147 | 134 | 308 |
| 24 | 85 | 103 | 132 | 171 | 274 | 151 | 138 | 315 |
| 25 | 87 | 105 | 135 | 176 | 281 | 155 | 142 | 323 |
| 26 | 89 | 108 | 138 | 181 | 289 | 159 | 146 | 330 |
| 27 | 91 | 110 | 142 | 185 | 296 | 163 | 150 | 337 |
| 28 | 93 | 113 | 145 | 190 | 304 | 167 | 153 | 345 |
| 29 | 95 | 115 | 148 | 195 | 311 | 171 | 157 | 352 |
| 30 | 98 | 119 | 153 | 202 | 322 | 177 | 163 | 363 |
| 31 | 100 | 122 | 157 | 207 | 329 | 181 | 167 | 371 |
| 32 | 102 | 124 | 160 | 212 | 337 | 185 | 171 | 378 |
| 33 | 104 | 126 | 164 | 217 | 344 | 189 | 175 | 386 |
| 34 | 107 | 127 | 167 | 222 | 352 | 193 | 179 | 393 |
| 35 | 109 | 129 | 170 | 227 | 360 | 197 | 183 | 401 |

| Weight Not Over (Lbs.) | Rate Group 1 | Rate Group 2 | Rate Group 3 | Rate Group 4 | Rate Group 5 | Rate Group 6 | Rate Group 7 | Rate Group 8 |
|---|---|---|---|---|---|---|---|---|
| 36 | 111 | 131 | 174 | 231 | 367 | 201 | 187 | 408 |
| 37 | 113 | 133 | 177 | 236 | 375 | 205 | 191 | 416 |
| 38 | 115 | 135 | 181 | 241 | 382 | 209 | 195 | 423 |
| 39 | 117 | 137 | 184 | 246 | 389 | 213 | 199 | 430 |
| 40 | 119 | 139 | 187 | 251 | 395 | 217 | 203 | 438 |
| 41 | 121 | 141 | 191 | 256 | 402 | 221 | 207 | 445 |
| 42 | 125 | 143 | 194 | 261 | 409 | 225 | 211 | 453 |
| 43 | 127 | 145 | 198 | 266 | 416 | 229 | 215 | 460 |
| 44 | 129 | 146 | 201 | 271 | 423 | 233 | 219 | 468 |
| 45 | 132 | 148 | 205 | 275 | 430 | 237 | 223 | 475 |
| 46 | 134 | 150 | 208 | 280 | 437 | 241 | 227 | 482 |
| 47 | 136 | 151 | 211 | 285 | 443 | 245 | 231 | 490 |
| 48 | 138 | 153 | 215 | 290 | 450 | 249 | 235 | 497 |
| 49 | 141 | 155 | 218 | 295 | 457 | 253 | 239 | 505 |
| 50 | 143 | 158 | 224 | 303 | 469 | 259 | 245 | 518 |
| 51 | 147 | 160 | 227 | 308 | 476 | 259 | 249 | 533 |
| 52 | 149 | 160 | 231 | 313 | 483 | 267 | 253 | 533 |
| 53 | 151 | 164 | 234 | 318 | 490 | 271 | 257 | 549 |
| 54 | 154 | 164 | 238 | 323 | 497 | 275 | 261 | 549 |
| 55 | 155 | 167 | 241 | 328 | 504 | 278 | 265 | 562 |

| Weight Not Over (Lbs.) | Rate Group 1 | Rate Group 2 | Rate Group 3 | Rate Group 4 | Rate Group 5 | Rate Group 6 | Rate Group 7 | Rate Group 8 |
|---|---|---|---|---|---|---|---|---|
| 56 | 157 | 167 | 245 | 333 | 511 | 283 | 270 | 562 |
| 57 | 157 | 170 | 248 | 338 | 518 | 286 | 274 | 574 |
| 58 | 157 | 170 | 251 | 343 | 524 | 291 | 278 | 574 |
| 59 | 157 | 173 | 255 | 348 | 531 | 294 | 282 | 587 |
| 60 | 157 | 173 | 258 | 353 | 538 | 299 | 285 | 587 |
| 61 | 164 | 176 | 262 | 358 | 545 | 302 | 290 | 602 |
| 62 | 165 | 176 | 265 | 362 | 551 | 308 | 292 | 602 |
| 63 | 167 | 179 | 269 | 367 | 559 | 310 | 298 | 617 |
| 64 | 168 | 179 | 272 | 372 | 562 | 316 | 298 | 617 |
| 65 | 169 | 182 | 276 | 377 | 573 | 318 | 305 | 632 |
| 66 | 169 | 182 | 279 | 382 | 573 | 324 | 305 | 632 |
| 67 | 169 | 186 | 282 | 387 | 584 | 326 | 313 | 647 |
| 68 | 169 | 186 | 286 | 392 | 584 | 332 | 313 | 647 |
| 69 | 169 | 189 | 289 | 397 | 595 | 334 | 320 | 662 |
| 70 | 169 | 189 | 293 | 402 | 595 | 340 | 320 | 662 |

**215.62 Non-Document Service Rates/Groups**

| Weight Not Over (Lbs.) | Rate Group 1 | Rate Group 2 | Rate Group 3 | Rate Group 4 | Rate Group 5 | Rate Group 6 | Rate Group 7 | Rate Group 8 |
|---|---|---|---|---|---|---|---|---|
| 1 | $33 | $34 | $39 | $45 | $52 | $47 | $40 | $75 |
| 2 | 38 | 40 | 46 | 52 | 65 | 55 | 46 | 89 |
| 3 | 40 | 46 | 53 | 59 | 79 | 62 | 53 | 101 |
| 4 | 43 | 50 | 60 | 66 | 93 | 68 | 59 | 112 |
| 5 | 46 | 55 | 67 | 73 | 106 | 75 | 65 | 124 |
| 6 | 48 | 58 | 72 | 80 | 119 | 80 | 70 | 136 |
| 7 | 51 | 61 | 76 | 86 | 131 | 86 | 75 | 148 |
| 8 | 53 | 65 | 80 | 93 | 143 | 91 | 79 | 160 |
| 9 | 55 | 68 | 85 | 100 | 156 | 96 | 84 | 172 |
| 10 | 58 | 70 | 89 | 104 | 165 | 102 | 87 | 180 |
| 11 | 60 | 73 | 92 | 109 | 175 | 105 | 91 | 191 |
| 12 | 62 | 76 | 96 | 115 | 185 | 109 | 95 | 203 |
| 13 | 65 | 79 | 99 | 120 | 195 | 113 | 99 | 215 |
| 14 | 67 | 81 | 103 | 125 | 205 | 117 | 103 | 226 |
| 15 | 69 | 84 | 106 | 130 | 214 | 121 | 107 | 238 |
| 16 | 72 | 87 | 109 | 136 | 223 | 125 | 111 | 249 |
| 17 | 74 | 89 | 113 | 141 | 231 | 129 | 115 | 260 |
| 18 | 76 | 92 | 116 | 146 | 238 | 133 | 119 | 271 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 19 | 79 | 95 | 120 | 151 | 246 | 137 | 123 | 282 |
| 20 | 81 | 97 | 123 | 156 | 253 | 141 | 127 | 293 |
| 21 | 83 | 100 | 126 | 161 | 260 | 144 | 131 | 302 |
| 22 | 85 | 102 | 130 | 166 | 268 | 148 | 135 | 311 |
| 23 | 87 | 105 | 133 | 171 | 275 | 152 | 139 | 318 |
| 24 | 90 | 108 | 137 | 176 | 283 | 156 | 143 | 325 |
| 25 | 92 | 110 | 140 | 181 | 290 | 160 | 147 | 333 |
| 26 | 94 | 113 | 143 | 186 | 298 | 164 | 151 | 340 |
| 27 | 96 | 115 | 147 | 190 | 305 | 168 | 155 | 347 |
| 28 | 98 | 118 | 150 | 195 | 313 | 172 | 158 | 355 |
| 29 | 100 | 120 | 153 | 200 | 320 | 176 | 162 | 362 |
| 30 | 103 | 124 | 158 | 207 | 331 | 182 | 168 | 373 |
| 31 | 105 | 127 | 162 | 212 | 338 | 186 | 172 | 381 |
| 32 | 107 | 129 | 165 | 217 | 346 | 190 | 176 | 388 |
| 33 | 109 | 131 | 169 | 222 | 353 | 194 | 180 | 396 |
| 34 | 112 | 132 | 172 | 227 | 361 | 198 | 184 | 403 |
| 35 | 114 | 134 | 175 | 232 | 369 | 202 | 188 | 411 |
| 36 | 116 | 136 | 179 | 236 | 376 | 206 | 192 | 418 |
| 37 | 118 | 138 | 182 | 241 | 384 | 210 | 196 | 426 |
| 38 | 120 | 140 | 186 | 246 | 391 | 214 | 200 | 433 |
| 39 | 122 | 142 | 189 | 251 | 398 | 218 | 204 | 440 |
| 40 | 124 | 144 | 192 | 256 | 404 | 222 | 208 | 448 |
| 41 | 126 | 146 | 196 | 261 | 411 | 226 | 212 | 455 |
| 42 | 130 | 148 | 199 | 266 | 418 | 230 | 216 | 463 |
| 43 | 132 | 150 | 203 | 271 | 425 | 234 | 220 | 470 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 44 | 134 | 151 | 206 | 276 | 432 | 238 | 224 | 478 |
| 45 | 137 | 153 | 210 | 280 | 439 | 242 | 228 | 485 |
| 46 | 139 | 155 | 213 | 285 | 446 | 246 | 232 | 492 |
| 47 | 141 | 156 | 216 | 290 | 452 | 250 | 236 | 500 |
| 48 | 143 | 158 | 220 | 295 | 459 | 254 | 240 | 507 |
| 49 | 146 | 160 | 223 | 300 | 466 | 258 | 244 | 515 |
| 50 | 148 | 163 | 229 | 308 | 478 | 264 | 250 | 528 |
| 51 | 152 | 165 | 232 | 313 | 485 | 264 | 254 | 543 |
| 52 | 154 | 165 | 236 | 318 | 492 | 272 | 258 | 543 |
| 53 | 156 | 169 | 239 | 323 | 499 | 276 | 262 | 559 |
| 54 | 159 | 169 | 243 | 328 | 506 | 280 | 266 | 559 |
| 55 | 160 | 172 | 246 | 333 | 513 | 283 | 270 | 572 |
| 56 | 162 | 172 | 250 | 338 | 520 | 288 | 275 | 572 |
| 57 | 162 | 175 | 253 | 343 | 527 | 291 | 279 | 584 |
| 58 | 162 | 175 | 256 | 348 | 533 | 296 | 283 | 584 |
| 59 | 162 | 178 | 260 | 353 | 540 | 299 | 287 | 597 |
| 60 | 162 | 178 | 263 | 358 | 547 | 304 | 290 | 597 |
| 61 | 169 | 181 | 267 | 363 | 554 | 307 | 295 | 612 |
| 62 | 170 | 181 | 270 | 367 | 560 | 313 | 297 | 612 |
| 63 | 172 | 184 | 274 | 372 | 568 | 315 | 303 | 627 |
| 64 | 173 | 184 | 277 | 377 | 571 | 321 | 303 | 627 |
| 65 | 174 | 187 | 281 | 382 | 582 | 323 | 310 | 642 |
| 66 | 174 | 187 | 284 | 387 | 582 | 329 | 310 | 642 |
| 67 | 174 | 191 | 287 | 392 | 593 | 331 | 318 | 657 |
| 68 | 174 | 191 | 291 | 397 | 593 | 337 | 318 | 657 |
| 69 | 174 | 194 | 294 | 402 | 604 | 339 | 325 | 672 |
| 70 | 174 | 194 | 298 | 407 | 604 | 345 | 325 | 672 |

**215.63 Payment of Postage**

**215.631 Methods of Payment**

Both GXG Document service shipments and Non-Document service shipments may be paid by postage stamps, postage validation imprinter (PVI) labels, or postage meter stamps.

**215.632 Official Mail**

*Mailings Made by Federal Government Agencies*

GXG shipments that are originated by federal agencies and departments are subject to the same postage payment requirements, weight and size limits, customs requirements, and general conditions for mailing as GXG shipments that are originated by non-governmental entities.

*USPS Mailings*

Both GXG Document Service shipments and Non-Document Service shipments mailed by Postal Service entities must bear the G–10 permit indicia that is prescribed for all USPS official mail. There is a 70-pound weight limit for USPS-originated GXG shipments going to all authorized, destinating countries. See section 144.2.

**215.7 Weight and Size Limits**

**215.71 General**

The weight, dimensional weight, and size limits set forth in this section are the same for both GXG Document service shipments and Non-Document service shipments.

**215.72 Weight Limits**

The maximum weight is 70 pounds.

**215.73 Dimensional Weight**

The equation to determine dimensional weight is as follows:

(Length × Width × Height)/166 = Dimensional Weight

When determining the dimensional weight, each individual measurement must be rounded down to the nearest whole inch.

**215.74 Size Limits**

**215.741 Minimum Size**

Items must be large enough—approximately 9 inches in height and 12 inches in length—so that a GXG Air Waybill/Shipping Invoice can be affixed on the face of the item.

**215.742 Maximum Size**

Length and girth combined may not exceed 108 inches. Individual dimensions may not exceed the following:

a. Length: 46 inches.
b. Width: 35 inches.
c. Height: 46 inches.

**215.8 Preparation Requirements**

**215.81 Preparation by the Sender**

a. Prepare the item as a flat or package using either the GXG envelope provided by the Postal Service or mailer-supplied packaging. Mailers using their own envelope or wrapping must also affix a GXG sticker (Item 107RGG3) to the front and back of the item.

b. Complete the GXG Air Waybill/Shipping Invoice (Item 11FGG1) to show the complete address of the sender and addressee. Items cannot be addressed to a post office box or an APO or FPO address.

c. GXG Document Service Shipment Preparation: Complete the ''Shipment Details'' to show the contents in detail including description and estimated cost of reconstruction. A separate customs declaration is not used. Sign and date the mailer agreement.

d. GXG Non-Document Service Shipment Preparation: Complete the ''Shipment Details'' to show the contents in detail including description, valuation, and country of manufacture. Non-Document service shipments cannot have a value that exceeds US $2,499. A separate customs declaration is not used. Sign and date the mailer agreement.

**215.82 Preparation by Acceptance Employee**

a. Check that the sender has properly completed the GXG Air Waybill/Shipping Invoice.

b. Complete the postage transaction if the item is not prepaid.

c. Complete the ''Origin'' information.

d. Remove the customer's copy of the GXG Air Waybill/Shipping Invoice and give it to the customer. Process the GXG Air Waybill/Shipping Invoice according to directions on the shipping document.

**215.83 Customs Forms Not Required**

The GXG Air Waybill/Shipping Invoice contains space for the sender to declare the contents. A separate postal customs declaration is not used.

* * * * *

[The Individual Country Listing pages in the *International Mail Manual* will be revised to reflect the availability of GXG service and the applicable postage rates.]

**Administrative Support Manual**

**2 AUDITS AND INVESTIGATIONS**

* * * * *

*27 Security*

* * * * *

*274 Mail Security*

* * * * *

**274.2 Opening, Searching, and Reading Mail Generally Prohibited**

* * * * *

**274.23 Definitions**

**274.231 Mail Sealed Against Inspection**

The following terms and definitions apply:

a. For purposes of this part, the terms ''mail sealed against inspection'' and ''sealed mail'' mean mail on which appropriate postage is paid, and which, under postal laws and regulations, is included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection.

b. The terms include First-Class Mail, Priority Mail, Express Mail (domestic and international), Mailgram messages, GXG Document service, and the international letter mail forming part of the LC class of Postal Union mail. See the definition of Postal Union mail in the *International Mail Manual.*

c. The terms exclude incidental First-Class matter permitted to be enclosed in or attached to certain Periodicals, Standard (A) and Standard (B) mailings (see DMM E070) and international transit mail (see 274.8).

d. When sealed mail is part of a mixed class mailing (see DMM E070), the sealed mail component of the combination item is treated as sealed mail only if it is contained in its own envelope or other form of sealed container.

**274.232 Mail Not Sealed Against Inspection**

The following terms and definitions apply:

a. For purposes of this part, the terms ''mail not sealed against inspection'' and ''unsealed mail'' mean mail on which appropriate postage for sealed mail is not paid, and which under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection.

b. The terms include Periodicals, Standard Mail, incidental First-Class attachments or enclosures mailed under DMM E070, and (as defined in the International Mail Manual) GXG Non-Document service, international parcel post mail, the AO class of Postal Union mail, and the international post cards and postal cards forming part of the LC class of Postal Union mail.

c. The terms do not include international transit mail (see 274.8).

* * * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–30776 Filed 11–30–00; 2:13 pm]

BILLING CODE 7710–12–U

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–301083; FRL–6756–6]**

**RIN 2070–AB78**

## Fludioxonil; Extension of Tolerance for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends a time-limited tolerance for residues of the fungicide fludioxonil in or on caneberries at 2 parts per million (ppm) for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on caneberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATES:** This regulation is effective December 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301083, must be received by EPA on or before February 5, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301083 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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,'' ''Regulations and Proposed Rules,'' 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/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301083. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of June 30, 1999 (64 FR 35037) (FRL–6086–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of fludioxonil in or on caneberries at 2 ppm, with an expiration date of December 31, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of fludioxonil on caneberries for this year's growing season due to the widespread development of pest resistance to previously-used standard fungicides benomyl, iprodione and vinclozolin; no currently available alternatives appear to provide suitable disease control and significant economic losses are expected with moderate to severe disease pressure. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fludioxonil on caneberries for control of gray mold in Oregon and Washington.

EPA assessed the potential risks presented by residues of fludioxonil in or on caneberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 30, 1999 (64 FR 35037) (FRL–6086–4). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301083 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 5, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301083, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account

uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**IV. Regulatory Assessment Requirements**

This final rule extends the expiration date of a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

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

**List of Subjects in 40 CFR Part 180**

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

Dated: November 22, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180— [AMENDED]

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

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

**§ 180.516 [Amended]**

2. In § 180.516, by amending the table in paragraph (b), by revising the expiration/revocation date for Caneberries from ''12/31/00'' to read ''12/31/01''.

[FR Doc. 00–31054 Filed 12–5–00; 8:45 a.m.]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–301079; FRL–6754–5]**

**RIN 2070–AB78**

## Avermectin; Extension of Tolerance for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation extends a time-limited tolerance for the combined residues of the insecticide and miticide avermectin [a mixture of avermectins containing greater than or equal to 80% avermectin $B_{1a}$ (5-O-demethyl avermectin $A_1$) and less than or equal to 20% avermectin $B_{1b}$ (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin $A_1$) and its delta-8,9-isomer] in or on celeriac at 0.05 parts per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on celeriac. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

**DATES:** This regulation is effective December 6, 2000. Objections and requests for hearings, identified by docket control number OPP–301079, must be received by EPA on or before February 5, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301079 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dan Rosenblatt, Registration

Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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,'' ''Regulations and Proposed Rules,'' 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/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301079. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 19, 1997 (62 FR 44089) (FRL–5737–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of avermectin [and its delta-8,9-isomer] in or on celeriac at 0.05 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of avermectin on celeriac for this year's growing season due to the continued pest pressure on this commodity from the two-spotted spider mite. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of avermectin on celeriac for control of two-spotted spider mite in California.

EPA assessed the potential risks presented by residues of the avermectins in or on celeriac. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 19, 1997 (62 FR 44089). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on celeriac after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301079 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 5, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301079, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule establishes a time-limited [tolerance] under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the [tolerance] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## V. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: November 20, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

**§ 180.449 Avermectin B1 and its delta-8,9-isomer; tolerances for residues.**

2. In § 180.449, amend paragraph (b) by revising the Expiration/revocation date for ''celeriac'' from ''1/31/00'' to read ''12/31/02.''

[FR Doc. 00–31055 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Part 1002

**[STB Ex Parte No. 542 (Sub–No. 6)]**

## Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—Policy Statement

**AGENCY:** Surface Transportation Board.

**ACTION:** Policy Statement.

**SUMMARY:** The Surface Transportation Board (Board) announces that henceforth it will apply its rule providing for a waiver of filing fees for state and local government entities only as originally intended. More specifically, the fee waiver rule will apply only to state and local government entities and only when they file on behalf of the general public. Any state or local government entity filing as an owner or proposed owner of a carrier or as a shipper, as well as quasi-governmental corporations and government-subsidized transportation companies, will not qualify for the fee waiver.

**DATES:** This policy statement is effective January 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan, (202) 565–1727 [TDD/TTY for the hearing impaired: 1–800–877–8339].

**SUPPLEMENTARY INFORMATION:** Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), agencies are obliged to establish fees for specific services provided to identifiable beneficiaries.[1] Office of Management and Budget (OMB) Circular No. A–25 establishes a policy of full cost recovery for government services and contains guidelines for federal agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular No. A–25, the Board's predecessor, the Interstate Commerce Commission (ICC), undertook a thorough examination of the fee policy in *Regulations Governing Fees for Services,* 1 I.C.C.2d 60 (1984) (*Fees for Services*). The ICC adopted numerous new fee items and provided for fee waivers in certain circumstances, including a fee waiver for government entities, 49 CFR 1002.2(e)(1). In so doing, the ICC established strict guidelines for applying the government-entity fee waiver—a policy that the Board will henceforth follow more strictly in applying the rule.

Rule 1002.2(e)(1) provides as follows:

(e) Waiver or reduction of filing fees. It is the general policy of the Board not to waive or reduce filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity. For purposes of this section the phrases ''federal government agency'' or ''government entity'' do not include a quasi-governmental corporation or government subsidized transportation company.

The fee waiver for federal government agencies is based on the IOAA, which excludes from its scope persons on official business of the United States Government. The fee waiver for state and local government entities was based on the provisions of former Circular No. A–25 that allowed agencies to make exceptions to the policy of full cost recovery where the recipient of a service was engaged in a non-profit activity designed for the public safety, health, or welfare, or if payment of the full fee by a state, local government, or non-profit group would not be in the interest of the program.[2]

In the *Fees for Services* proceeding, the ICC originally proposed to assess 50% of applicable fees to state or local government entities. It ultimately decided, however, to assess no fee to state and local government entities. The agency explained that state and local government entities generally do not receive direct benefits from participation in agency proceedings and that the benefits instead flow to the general public residing in the area. *Fees for Services* at 89. But the ICC limited the circumstances under which the fee waiver would apply, specifically providing that the waiver should not apply where a state agency owns a carrier and is before the ICC in its proprietary role. The ICC stated (*id.* at 71):

> [W]e conclude here that when a governmental agency owns or subsidizes some transportation entity and comes before the Commission in that capacity, it should be required to pay the entire fee that would otherwise be applicable. When a State-owned transportation entity acts in the same capacity as a privately owned transportation entity, it should be treated as such. The Interstate Commerce Act does not exempt such transportation entities, and we do not believe that those entities should be treated differently from private transportation entities for purposes of determining user fees.
>
> The State-owned carrier in those situations receives the ''special benefits'' envisioned under the IOAA and Budget Circular A–25. We recognize that there may be public benefits associated with a State-owned entity. However, those public benefits are indistinguishable from the public benefits that are incidental to the special benefits conferred upon private carriers in a similar posture. Therefore, we believe fees should be charged to the state-owned entities.

[1] 31 U.S.C. 9701 provides, in pertinent part:

(a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to the policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

[2] Circular No. A–25, revised in 1993, no longer contains an exception from the policy of full cost recovery for state and local governments.

In recent years the fee waiver for state and local government entities rule has been applied more broadly than envisioned in *Fees for Services*. We have waived fees in cases where the filer has been a state or local government entity acting in a proprietary capacity as a carrier. For example, the fee waiver has been applied where states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party. We also have waived fees where the filer has been a quasi-government corporation. For example, waivers have been granted if the filer demonstrated that it was created through legislation designed to meet a public purpose.

Public corporations are created by statute for public purposes only and the interests of public corporations are the exclusive property and domain of the government. Private corporations, on the other hand, are created for private, rather than purely public, purposes and their powers are exercised for the profit or advantage of the stockholders. Quasi-public (or quasi-governmental) corporations, commonly referred to as public service corporations, have the appearance of being public, but in many respects they are private. Quasi-public corporations are private corporations that have special powers or privileges of a public nature, such as the power of eminent domain, to enable them to carry out those functions that benefit the public; but they also exercise their powers to further the interests of their stockholders. Corporations are not considered public merely because they are creatures of legislation or established to promote the public interest. In our view, only the true public corporation should qualify for a waiver. Whether a corporation should be considered public or not depends on the terms of its charter and the laws under which it has been organized.

We are not, through this policy, seeking to inhibit parties from using our processes, or to undercut transactions by which, for example, local bodies attempt to facilitate continued rail service. But Congress has directed us to collect appropriate fees, and we must make every effort to conform our fee assessment and collection practices to the policy of full cost recovery that underlies the IOAA and Circular No. A–25. Thus, filers must henceforth clearly demonstrate that they are true public corporations in order to qualify for the fee waiver. Fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, or that is a shipper, and comes before the Board in that capacity. *See Fees for Services* at 71. Fees will also be assessed to quasi-governmental corporations or government-subsidized transportation companies for *any filing* submitted for which there is a fee. The fee waiver will be available to a state or local government entity that is not acting in the capacity of a carrier or shipper. Thus, for example, a state or local entity filing an adverse (or third party) abandonment proposal would benefit from the waiver rule because the filer would not be appearing as a carrier or as a shipper.

Entities that do not qualify for the fee waiver may request a fee waiver or reduction in fees under 49 CFR 1002.2(e)(2), which provides that in extraordinary situations the Board will waive or reduce fees. The requestor must show that the waiver or reduction is in the best interest of the public or that payment of the fee would impose an undue hardship on the requestor.

As a final matter, we are clarifying the process by which waiver requests will be administered at the Board. Currently, a waiver request must be submitted at the time the related filing is submitted, and a filing (other than a tariff) not accompanied by the appropriate fee is deficient. *See* 49 CFR 1002.2(e)(2)(i), 1002.2(b). Waiver requests are considered only when accompanied by the related filing; waiver requests submitted in advance of the filing to which they relate are not accepted. When a waiver request is accompanied by the related filing and the appropriate fee, the filing is processed immediately, the fee is deposited, and the waiver request is acted upon in due course. If the waiver is granted, the filer receives a refund from the U. S. Department of the Treasury.

We understand that some parties may find it financially burdensome to submit the fee and then run the risk that the waiver will not be granted. We will permit parties to file waiver requests without submitting the fees; however, as we sometimes need to review the substantive document in order to determine whether the waiver ought to be granted, we will not accept a waiver request unless the substantive document is also filed. Moreover, if a waiver request is filed with the related filing but without the appropriate fee, we will be unable to process the substantive filing until the fee issue is resolved. Therefore, whenever a waiver request is filed without an appropriate fee, the substantive filing will be processed only after the waiver request has been granted or, if the request is denied, upon receipt of the appropriate fee. A filer seeking a waiver and prompt processing of a filing should, therefore, submit the fee, the related filing and the waiver request simultaneously.

The legal and policy bases underlying rule 1002.2(e)(1) already have been established in *Fees for Services*. Thus, we do not propose a new rule or policy here, but rather announce a stricter adherence to a policy that has already been established and was never formally changed. For that reason, we do not seek public comment on this announcement that we will henceforth follow this policy more literally.

Decided: November 29, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–30965 Filed 12–5–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[I.D. 080900A]**

**RIN 0648–A028**

## Fisheries of the Exclusive Economic Zone Off Alaska; Rebuilding Overfished Fisheries

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

**ACTION:** Approval of fishery management plan amendment.

**SUMMARY:** NMFS announces the approval of Amendment 15 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). This amendment is necessary to implement a plan to rebuild the overfished stock of St. Matthew blue king crab. This action is intended to ensure that conservation and management measures continue to be based on the best scientific information available and is intended to achieve, on a continuing basis, the optimum yield from the affected crab fisheries.

**DATES:** The amendment was approved on November 29, 2000.

**ADDRESSES:** Copies of Amendment 15 to the FMP, and the Environmental Assessment (EA) prepared for the amendment are available from the Sustainable Fisheries Division, Alaska

Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel

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

**SUPPLEMENTARY INFORMATION:** NMFS declared the stock of St. Matthew blue king crab (*Paralithodes platypus*) overfished on September 24, 1999, because the spawning stock biomass was below the minimum stock size threshold as defined in the FMP. NMFS notified the North Pacific Fishery Management Council (Council) once NMFS determined that the stock was overfished (64 FR 54791, October 8, 1999). The Council developed a rebuilding plan within 1 year as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In June 2000, the Council adopted Amendment 15, the rebuilding plan, to accomplish the purposes outlined in the national standard guidelines to rebuild the overfished stock. Amendment 15 specifies a time period for rebuilding the stock that satisfies the Magnuson-Stevens Act. The rebuilding plan is estimated to allow St. Matthew blue king crab to rebuild, with a 50 percent probability, within 10 years. The stock will be considered ''rebuilt '' when the stock reaches the maximum sustainable yield stock size level in 2 consecutive years.

The rebuilding plan consists of a framework that references the State of Alaska's harvest strategy, bycatch control measures, and habitat protection measures.

The rebuilding plan will use the harvest strategy developed by the Alaska Department of Fish and Game and adopted by the Alaska Board of Fisheries (Board). The FMP defers to the State of Alaska the authority to develop harvest strategies, with oversight by NMFS and the Council. The rebuilding harvest strategy should result in more spawning biomass, because more large male crab would be conserved and fewer juveniles and females would die due to incidental catch and discard mortality. This higher spawning biomass would be expected to produce good year-classes when environmental conditions are favorable.

The rebuilding plan also references the bycatch reduction measures and habitat protection measures adopted by the Board in March 2000. The Board adopted gear restrictions to reduce bycatch of sub-legal and female blue king crab in the directed fishery. To protect the habitat of egg-bearing females, the Board took action to close State waters around St. Matthew Island, Hall Island, and Pinnacles Island to crab fishing. Protection of habitat and reduction of bycatch will reduce mortality on juvenile and egg-bearing female crabs, thus allowing a higher percentage of each year-class to contribute to spawning and future landings.

An EA was prepared for Amendment 15 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA can be obtained from NMFS (see **ADDRESSES**).

A notice of availability for the proposed Amendment 15 to the FMP, which described the proposed amendment and invited comments from the public, was published in the **Federal Register** on August 29, 2000 (65 FR 52405). Comments were invited until October 30, 2000.

**Response to Comments**

NMFS received one public comment on Amendment 15.

*Comment:* The comment requested that NMFS include additional analysis in the EA, however, it did not recommend approval or disapproval of the amendment. The comment advanced these concerns about the EA: (1) the costs associated with monitoring bycatch of blue king crab in the trawl fishery were not analyzed; (2) the discussion of higher probabilities of rebuilding under alternative rebuilding scenarios is insufficient; and (3) further evaluation of the economic impacts of implementing a stricter rebuilding time and probability is needed.

*Response:* NMFS determined that the existing EA is sufficient for decision making, complies with applicable law, and additional analysis would not change the components of the rebuilding plan. The EA represents the best scientific information available, as certified by the Alaska Fisheries Science Center. For the following reasons, NMFS does not believe modification of the EA is warranted.

1. The decision not to enact measures to reduce bycatch of blue king crab in the trawl fisheries was based on the fact that, according to observer data, blue king crab is not a measurable component of trawl bycatch. Thus, an analysis of the costs associated with monitoring a bycatch limit or a closed area would not change the conclusion that trawl bycatch is not a significant source of blue king crab mortality.

2. The rebuilding time period satisfies the requirements of section 304(e)(4)(A) of the Magnuson–Stevens Act. The rebuilding plan is estimated to allow the St. Matthew blue king crab stock to rebuild, with a 50 percent probability, to the $B_{msy}$ level within 10 years. A 50 percent rebuilding probability within 10 years is the estimated probability recommended in the NMFS technical guidance for rebuilding overfished stocks. This probability of rebuilding includes the conservative parameter that stock will be considered 'rebuilt' when the stock size reaches the Bmsy in 2 consecutive years. The stock assessment experts that developed the model used to estimate the rebuilding times and probabilities determined that a 50 percent probability best represented reality given the biology of the species and our current level of scientific information. However, the EA also analyzes the alternatives at a 90 percent probability. The alternative that would achieve rebuilding at a 90 percent probability within 10 years is the no fishing alternative, which the EA analyzes. The exercise of estimating rebuilding probabilities provides managers an idea of the potential outcomes of different alternatives and to help assure that the chosen alternative will rebuild the stock within 10 years. One of the measures that predicts success of this rebuilding plan is that it is estimated to rebuild the stock in 12 years with a 90 percent probability. In other words, NMFS predicts that there is a 90 percent probability that the estimated spawning biomass will be above the $B_{msy}$ level of 22 million lb (9,679.2 metric tons) for 2 years within 12 years.

3. Information on the percentage of a crab catcher vessel's total crab catch that is comprised of St. Matthew blue king crab is not substantially relevant to the decision making. The comment implies that this information would lead to a more conservative rebuilding plan because most catcher vessels do not depend on this fishery as a sole source of income. The rebuilding harvest strategy provides a balance between being sufficiently conservative to rebuild the stock and prevent overfishing, yet to allow some fishing during the rebuilding period once the stock increases in abundance to above the MSST. A fishery will occur when the stock abundance warrants it, regardless of each individual vessel's other sources of income.

NMFS determined that Amendment 15 to the FMP is consistent with the Magnuson–Stevens Act and other applicable laws and approved Amendment 15 on November 29, 2000. Additional information on this action is contained in the August 29, 2000, notice of availability (65 FR 52405).

No regulatory changes are necessary to implement this FMP amendment.

Dated: November 30, 2000.

**Clarence Pautzke,**

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

[FR Doc. 00–31033 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[PRM–50–62]**

### Changes to Quality Assurance Programs; Withdrawal of Remaining Issues Concerning a Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is terminating its plans to develop a voluntary option alternative to its regulations to allow licensees to make unilateral changes to their quality assurance (QA) program descriptions. This action is being taken because the petitioner, the Nuclear Energy Institute (NEI), has withdrawn the remaining issues raised in its petition for rulemaking submitted on June 8, 1995 (Docket No. PRM–50–62). NEI's action is related in part to a revision dated February 23, 1999, to the Commission's regulations that was implemented in response to the petition and provided the industry with a reduction of unnecessary regulatory burden. The effect of this action is that further revisions to the Commission's quality assurance regulations are not being developed.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received on the notice of receipt of the petition (60 FR 47716; September 14, 1995), NRC's response to the petitioner, public comments received on the direct final rule (64 FR 9029; February 23, 1999), NRC's response to comments received on the direct final rule partially granting the petition (64 FR 42823; August 6, 1999), the Petitioner's letter (Accession No. ML003755305), stating that it is not necessary to pursue further changes, and NRC's confirmation letter (Accession No. ML003747685), pertaining to the withdrawal of the petition are available for public inspection or copying for a fee in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for perusal at the NRC's rulemaking website http://ruleforum.llnl.gov. Questions or comments regarding this website should be directed to Carol A. Gallagher at 301–415–5905 or CAG@NRC.GOV.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Bugg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3221, e-mail mtb@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

By letter dated June 8, 1995, NEI petitioned the NRC to amend its regulations controlling changes to nuclear power plant licensee QA programs. The petition was received by the Commission on June 19, 1995, and assigned Docket No. PRM–50–62. The petitioner requested that the NRC modify 10 CFR 50.54(a) to permit a nuclear power plant licensee to make a broader range of changes to its QA programs without prior NRC approval. At the time of the petition submittal, 10 CFR 50.54(a)(3) allowed a licensee to ''* * * make a change to a previously accepted quality assurance program description included or referenced in the Safety Analysis Report, provided the change does not reduce the commitments in the program description previously accepted by the NRC.'' NEI requested that the Commission amend this requirement to allow a licensee to ''* * * make a change to a previously accepted quality assurance program description included or referenced in its Safety Analysis Report without prior Commission approval unless the proposed change involves a change in the technical specifications incorporated in the license or involves an unreviewed safety question,'' consistent with the criteria of 10 CFR 50.59. According to NEI's proposal, changes involving unreviewed safety questions (USQs) would require NRC approval before implementation.

## The Petition

NEI stated that 10 CFR 50.54(a) is sometimes interpreted by the NRC as requiring NRC approval for any changes in the QA program, regardless of the safety significance associated with the change. As a consequence, there are often prolonged and sometimes unnecessary regulatory debates about the correct interpretation of the term ''reduction in commitment.'' NEI presented the following examples of changes that it believed could be made without the need for prior NRC approval but that have been viewed as ''reductions in commitment,'' requiring prior NRC approval:

1. Changes in the level of approval of administrative, implementation, or policy procedures, regardless of the safety significance;
2. Changes in the company organization as it is described in a licensee's original quality plan;
3. Changes in frequency for audit, review, or surveillance activities that have minimal, if any, safety significance;
4. Adoption of a more recent national standard that may, or may not, have been endorsed by the NRC staff, that results in a different implementation methodology, yet fulfills the same function and achieves the same objective as the original standard described in the QA program description through the use of enhanced technology or other developments; and
5. Adoption of quality processes different or more effective and efficient than those described in a licensee's original quality plan based on the safety significance and past operating performance.

NEI estimated that NRC review and approval of these types of changes cost the industry in excess of $1 million per year. In addition, NEI asserted that licensees occasionally were hesitant to pursue QA program improvements because of the resources required for NRC approval, even though the ultimate result would be improvements in efficiency, quality, or safety.

NEI also noted that the NRC's main purpose for the current requirement in 10 CFR 50.54(a) (which was adopted in 1983) was to preclude licensees from making certain changes to QA programs without prior NRC approval because, in the past, some QA programs had been changed and no longer conformed to NRC regulations. NEI claimed that its proposed approach in PRM–50–62 would still address the NRC's concerns

because QA program changes would continue to be reported periodically to the NRC as required by 10 CFR 50.71(e) as program updates, and changes that involve a USQ or cause a change to the technical specifications would be submitted to the NRC for approval before they are implemented. The petitioner reiterated that this is the same process used for change control for many other aspects of the facility design and operation, and should be used for QA programs as well. NEI further stated that the proposed amendment would improve the consistency of the regulatory process and would result in increased safety of commercial nuclear power plants through more efficient use of NRC and industry resources.

**Comments Received on the Petition**

On September 14, 1995 (60 FR 47716), the NRC published a notice of receipt of the NEI petition for rulemaking and provided an opportunity for public comment. The document requested that public comment on eight specific questions on critical regulatory aspects of the NEI petition. Seventeen comment letters were received, plus one comment letter that supplemented one of the original letters.

Eleven of the public comment letters were sent by nuclear power plant licensees and NEI; all supported the proposed change in the regulations. The six non-NEI/non-licensee letters were sent by individual concerned citizens (two are currently employed in the nuclear field); all expressed opposition to the relaxation of current requirements that address changes in QA programs. All of the comment letters addressed issues raised in the petition, particularly the appropriateness of using the 10 CFR 50.59 criteria for QA program changes.

**Commission Decision**

The Commission agreed with NEI that the 10 CFR 50.54(a) criteria under which a licensee was allowed to make unilateral QA program changes was too stringent because it prevented a licensee from making QA program changes of minor safety significance without first obtaining NRC approval. The Commission decided that new criteria should be adopted to broaden the scope of changes that could be made by a licensee without prior NRC approval. Therefore, the Commission accepted the petition in part and issued a direct final rule (64 FR 9029; February 23, 1999) that revised 10 CFR 50.54(a) to allow a licensee to make additional changes to selected elements of its QA program without having to obtain prior NRC approval. As of April 26, 1999, a licensee is permitted to make the following types of unilateral changes to its QA programs:

1. The use of a quality assurance standard approved by the NRC that is more recent than the QA standard in a licensee's current QA program at the time of the change;
2. The use of a quality assurance alternative or exception previously approved by an NRC safety evaluation, provided that the bases of the NRC approval are applicable to a licensee's facility;
3. The use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles;
4. The use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or, alternately, the use of descriptive text;
5. The elimination of quality assurance program information that duplicates language in quality assurance regulatory guides and quality assurance standards to which a licensee is committed; and
6. Organizational revisions that ensure that persons and organizations performing QA functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule considerations, when these concerns are in conflict with safety considerations.

Licensees shall continue to conform to the requirements in Appendix B to 10 CFR Part 50 and 10 CFR 50.34(b)(6)(ii) and to notify the NRC of these changes as required by 10 CFR 50.71(e). The direct final rule provided immediate relief to licensees by clearly defining six categories of QA program changes that do not require NRC approval prior to implementation. On June 7, 2000, the NRC staff conducted a public workshop to solicit feedback on the implementation of the revision to 10 CFR 50.54(a) and to gather information to determine the need for and feasibility of developing a voluntary alternative rule based on the NEI petition. Workshop participants acknowledged the significant burden reduction already achieved through the 1999 revision to 10 CFR 50.54(a). As a result of the discussions at the workshop, NEI concluded, and the NRC agreed, that a separate rulemaking on 10 CFR 50.54(a) is not needed at this time. By letter dated August 15, 2000 (Accession No. ML003755305), NEI documented its belief that ''it is not necessary to pursue'' further changes to 10 CFR 50.54(a) related to its petition. By letter to NEI dated September 5, 2000, the NRC staff confirmed NEI's intent to withdraw the remainder of the 1995 petition.

In the direct final rule published on February 23, 1999 (64 FR 9029), the NRC noted that completion of the NEI petition should be accomplished in two stages. The first stage was the immediate burden relief of partially granting the NEI petition through the direct final rule. The second stage proposed was a follow-on rulemaking action in which criteria would have been developed for determining other areas in which unilateral changes could be made by licensees without prior NRC approval that would not negatively impact on the effectiveness of the licensee's QA program. However, given the petitioner's belief that it is not necessary to pursue further changes and based upon feedback from a public workshop on the implementation of the direct final rule, the NRC has decided not to pursue the previously planned second rulemaking.

For these reasons, the NRC finds that all outstanding issues relating to PRM–50–62 are resolved. This completes NRC action on PRM–50–62.

Dated at Rockville, Maryland, this 30th day of November, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–31100 Filed 12–5–00; 8:45 am]

BILLING CODE 7590–01–P

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 3**

**[Docket No. 00–27]**

**RIN 1557–AB14**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 208 and 225**

**[Regulations H and Y; Docket No. R–1085]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 325**

**RIN 3064–AC17**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 567**

**[Docket No. 2000–96]**

**RIN 1550–AB11**

## Risk-Based Capital Standards: Claims on Securities Firms

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The Board, OCC, FDIC and OTS (collectively, the Agencies) are proposing to amend their respective risk-based capital standards for banks, bank holding companies, and savings associations (collectively, institutions) with regard to the risk weighting of claims on, and claims guaranteed by, qualifying securities firms. This proposed rule would reduce the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms incorporated in countries that are members of the Organization for Economic Cooperation and Development (OECD) from 100 percent to 20 percent under the Agencies' risk-based capital rules.

**DATES:** Your comments must be received by January 22, 2001.

**ADDRESSES:** Comments should be directed as follows:

*OCC:* You may send comments electronically to *regs.comments@occ.treas.gov* or by mail to Docket No. 00–27, Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274. You can inspect and photocopy comments at that address. You can make an appointment to inspect the comments by calling (202) 874–5043.

*Board:* Comments should refer to docket number R–1085, and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between the hours of 8:45 a.m. and 5:15 p.m. and, outside those hours, to the Board's security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays.

*FDIC:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838; Internet address; comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

*OTS:* Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–96. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Docket No. 2000–96. Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–96; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to *public.info@ots.treas.gov*, Attention Docket No. 2000–96, and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet Site at *www.ots.treas.gov*.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Margot Schwadron, Risk Expert (202/874–5070), Capital Policy Division; or Ron Shimabukuro, Senior Attorney (202/874–5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Norah Barger, Assistant Director (202/452–2402), Barbara Bouchard, Manager (202–452–3072), or John F. Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Janice Simms (202/872–4984), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

*FDIC:* For supervisory issues, Stephen G. Pfeifer, Examination Specialist (202/898–8904), Accounting Section, Division of Supervision; for legal issues, Leslie Sallberg, Counsel, (202/898–8876), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* David W. Riley, Project Manager, (202/906–6669), Supervision Policy; Teresa A. Scott, Counsel, Banking and Finance (202/906–6478), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The Agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled ''International Convergence of Capital Measurement and Capital Standards'' (Basel Accord or Accord). The Basel Accord was developed by the Basel Committee on Banking Supervision (Basel Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries.[1] The Basel Accord provides a framework for assessing the capital adequacy of a depository institution by risk weighting

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Basel Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg.

its assets and off-balance-sheet exposures primarily based on credit risk.

The original Basel Accord imposed a 20 percent risk weight for claims on banks incorporated in OECD countries [2] and a 100 percent risk weight for claims on securities firms and most other nonbanking firms. In April 1998, the Basel Committee amended the Basel Accord to lower the risk weight from 100 percent to 20 percent for claims on, and claims guaranteed by, securities firms incorporated in OECD countries if such firms are subject to supervisory and regulatory arrangements that are comparable to those imposed on OECD banks. Such arrangements must include risk-based capital requirements that are comparable to those applied to depository institutions under the Accord and its amendment to incorporate market risks. The term ''comparable'' is also intended to require that qualifying securities firms (but not necessarily their parent organizations) be subject to consolidated regulation and supervision with respect to any of their subsidiaries.

One of the primary reasons that the Basel Committee amended the Accord was to make it consistent with the treatment of claims on securities firms permitted under the European Union's (EU) Capital Adequacy Directive (CAD). A number of European countries have followed the CAD for some time. The CAD, which subjects EU depository institutions and securities firms to the same capital requirements, applies a 20 percent risk weight to claims on both depository institutions and securities firms.

This proposed rule would reduce the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms from 100 percent to 20 percent under the Agencies' risk-based capital rules. Under this proposal, qualifying securities firms must be incorporated in an OECD country, be subject to supervisory and regulatory arrangements that are comparable to those imposed on OECD banks, and have a credit rating that is in one of the three highest investment grade rating categories used by a nationally recognized statistical rating organization (rating agency).

Qualifying U.S. securities firms must be broker-dealers registered with the Securities and Exchange Commission (SEC). Qualifying U.S. securities firms also must be subject to and comply with the SEC's net capital rule,[3] and margin and other regulatory requirements applicable to registered broker-dealers.[4]

Qualifying securities firms incorporated in any other OECD country must be subject to consolidated supervision and regulation (covering their subsidiaries, but not necessarily their parent organizations) comparable to that imposed on depository institutions in OECD countries, including risk-based capital requirements comparable to those applied to depository institutions under the Accord.[5]

The Agencies are of the view that supervision and regulation alone are not necessarily sufficient indicators of creditworthiness to warrant a 20 percent risk weight. Consequently, a qualifying securities firm, or the parent consolidated group of a qualifying securities firm, must have a long-term issuer credit rating,[6] or a rating on at least one issue of long-term (*i.e.,* one year or longer) unsecured debt, from a nationally recognized statistical rating organization (rating agency) that is in one of the three highest investment grade rating categories used by the rating agency.[7]

Claims on, and claims guaranteed by, holding companies and other affiliates of a qualifying securities firm, would retain their current 100 percent risk weighting under the Agencies' risk-based capital rules. This treatment is consistent with the existing treatment for depository institution holding companies and other affiliates of depository institutions in consolidated holding companies. Claims on, and claims guaranteed by, a subsidiary of a qualifying securities firm also would retain their current 100 percent risk weight, unless such subsidiary's obligations were guaranteed by a qualifying securities firm (*e.g.,* its parent qualifying securities firm).

The Agencies are proposing to revise their rules to apply a 20 percent risk weight to qualifying securities firms for several reasons. First, claims on qualifying securities firms generally involve relatively low credit risk because such firms are subject to supervision and regulation, including capital requirements, comparable to banks in OECD countries and have ratings in one of the three highest investment grade rating categories. Second, the 100 percent risk weight applied to claims on securities firms under the Agencies' current capital rules is more stringent than the 20 percent capital charge applied to claims on securities firms under the Basel Accord and the CAD. This results in a competitive inequity for U.S. depository institutions, which would be mitigated by this proposed rule.

[2] The OECD is an international organization of countries that are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices, liberal trade policies, and the absence of exchange controls. For purposes of the Basel Accord, OECD countries are those countries that are full members of the OECD or that have concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow. A listing of OECD member countries is available at *www.oecdwash.org.* Any OECD country that has rescheduled its external sovereign debt, however, may not receive the preferential capital treatment generally granted to OECD countries under the Accord for five years after such rescheduling.

[3] The SEC's net capital rule, as set forth at 17 CFR 240.15c3–1, requires broker-dealers to maintain continually sufficient liquid assets to protect the interests of customers and other market participants if a broker-dealer becomes insolvent. Under the SEC's rules, a broker-dealer must maintain a minimum ratio of net capital to either liabilities or customer-related receivables.

[4] U.S. securities firms that have registered with the SEC as over-the-counter derivatives dealers would not be qualifying securities firms because they are subject to a less rigorous net capital rule and are exempt from a variety of regulatory requirements applicable to fully regulated broker-dealers, including certain margin requirements. *See* 63 FR 59362 (Nov. 3, 1998).

[5] For example, this generally would include firms engaged in securities activities in the EU that are subject to the CAD. Securities firms in other OECD countries would need to demonstrate to lending institutions and regulatory authorities that their supervision and regulation qualify as comparable under this rule and the Accord.

[6] A long issuer credit rating is one that assesses a firm's overall capacity and willingness to pay on a timely basis its unsecured financial obligations. Issuer credit ratings that are assigned to non-broker-dealer subsidiary or affiliate of the securities firm, or debt ratings on long-term unsecured debt issues of such a subsidiary or affiliate of the securities firm, would not satisfy the rating criteria to be a qualifying securities firm.

[7] The Agencies recognize that two recent proposals used the two highest investment grade rating categories to identify assets that would qualify for a 20 percent risk weight. The Basel Committee's June 1999 consultative paper entitled ''A New Capital Adequacy Framework'' proposed that a bank, commercial firm or securitization position rated in one of the two highest investment grade rating categories would qualify for a 20 percent risk weight. In addition, the Agencies' recent proposed rule on recourse and direct credit substitutes proposed that a securitization position rated in one of the two highest investment grade rating categories would qualify for a 20 percent risk weight. 65 FR 12319 (March 8, 2000).

The Agencies considered proposing a rating requirement for securities firms consistent with these other proposals, but decided for several reasons that it would be appropriate to propose requiring qualifying securities firms to be rated in one of the top three rating categories of a rating agency. In addition to meeting the rating standard, qualifying securities firms are subject to supervision and regulation comparable to depository institutions in OECD countries. This supervision distinguishes qualifying securities firms from other types of entities, such as commercial firms. Further, under the current Basel Accord, claims on OECD depository institutions and securities firms receive a 20 percent risk weight without satisfying a similar credit rating requirement. Thus, while the Agencies considered both a higher rating requirement, on the one hand, and whether any rating requirement should be imposed on securities firms, on the other, the Agencies believe the proposed rating requirement strikes an appropriate balance.

The Agencies are seeking comment on all aspects of this rule. Particularly, the Agencies request comment on their proposed criteria for qualifying securities firms.

(1) Does the rating of a broker-dealer's parent consolidated organization serve as a reliable indicator of the credit quality of claims on, or guaranteed by, the broker-dealer?

(2) Is there a rating or other indicator of a broker-dealer's credit quality that is more reliable and more consistent with market practices than the proposed standard?

(3) Should claims on, and claims guaranteed by, certain subsidiaries of qualifying securities firms be accorded a 20 percent risk weight? If so, what should the qualifying criteria be for such subsidiaries?

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Agencies certify that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not have a significant impact on the amount of capital required to be held by small institutions. The proposed rule: (1) Only covers a narrow category of assets that might be held by an institution, (2) decreases the amount of capital that an institution must hold for those assets, (3) does not significantly change the amount of total capital an institution must hold, and (4) will have a positive impact on an affected institution's capital requirements. Accordingly, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act**

The Agencies have determined that this proposal does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

**Executive Order 12866**

The Comptroller of the Currency and the Director of the OTS have determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. This proposed rule would reduce the current risk weighting applied to claims on qualifying securities firms and would not impose additional cost or burden on institutions.

**OCC and OTS—Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposal would reduce the current risk-based capital charge for claims on, and claims guaranteed by, qualifying securities firms. Accordingly, the OCC and OTS have determined that this proposed rule would not result in the expenditure by state, local, and tribal governments, or by the private sector, of more than $100 million or more in any one year. In fact, this proposed rule would impose no new cost or burden on state, local, or tribal governments, or the private sector. Therefore, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

**Plain Language Requirement**

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

**FDIC Assessment of Impact of Federal Regulation On Families**

The FDIC has determined that this proposed rule would not affect family well being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277).

**List of Subjects**

*12 CFR Part 3*

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 325*

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

*12 CFR Part 567*

Capital, Reporting and recordkeeping requirements, Savings associations.

**Department of the Treasury**

*Office of the Comptroller of the Currency*

*12 CFR Chapter I*

**Authority and Issuance**

For the reasons set out in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12 of the Code of Federal Regulations as follows:

## PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3:

A. In section 1:

i. Redesignate paragraphs (c)(17) through (c)(31) as (c)(18) through (c)(32); and

ii. Add new paragraph (c)(17).

B. In section 3:

i. Redesignate footnotes 11a and 11b as 11b and 11c;

ii. Add new paragraph (a)(2)(xiii);

iii. Add new footnote 11a to read as follows:

## Appendix A to Part 3—Risk-Based Capital Guidelines

*Section 1. Purpose, Applicability of Guidelines, and Definitions.*

* * * * *

(c) * * *

(17) *Nationally recognized statistical rating organization (NRSRO)* means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) as a nationally recognized statistical rating organization for various purposes, including the Securities Exchange Commission net capital requirement for brokers and dealers.

* * * * *

*Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items.*

* * * * *

(a) * * *

(2) * * *

(xiii) Claims on, or guaranteed by, a qualifying securities firms incorporated in an OECD country, subject to the following conditions:

(A) If the securities firm is incorporated in the United States, then the securities firm must be a broker-dealer that is registered with the Securities and Exchange Commission and must be subject to and comply with the Securities Exchange Commission net capital regulation (17 CFR 240.15c3(1)), margin regulations and other regulatory requirements applicable to a registered broker-dealer.

(B) If the securities firm is incorporated in any other OECD country, then the securities firm must be subject to consolidated supervision and regulation (covering its subsidiaries, but not necessarily its parent organization) comparable to that imposed on depository institutions under the Basel Capital Accord.[11a]

(C) A securities firm (or its parent consolidated group), whether incorporated in the United States or another OECD country, must also have a long-term issuer credit rating, or a credit rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization. The credit rating must be in one of the three highest investment grade categories used by the nationally recognized statistical rating organization.

* * * * *

[11a] *See* Accord on International Convergence of Capital Measurement and Capital Standards as adopted by the Basle Committee on Banking Regulations and Supervisory Practices (renamed as the Basel Committee on Banking Supervision), dated July 1988.

Dated: November 6, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

## Federal Reserve System

*12 CFR Chapter II*

For the reasons set forth in the joint preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

## Part 208—Membership of State Banking Institutions in the Federal Reserve System (Regulation H)

1. The authority citation for part 208 continues to read as follows:

**Authority:** 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, the following amendments are made:

a. In sections III. and IV., redesignate footnotes 34 through 52 as footnotes 35 through 53;

b. In section III.C.2., the three existing paragraphs are designated as III.C.2.a. through III.C.2.c., and a new section III.C.2.d. is added with a new footnote 34; and

c. In Attachment III, under Category 2, a new paragraph 12. is added. The revision and additions read as follows:

## Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[34]

* * * * *

[34] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest investment grade rating categories used by the rating agency.

**Attachment III—Summary of Risk Weights and Risk Categories for State Member Banks**

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

## Part 225—Bank Holding Companies and Change in Bank Control (Regulation Y)

1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In appendix A to part 225, the following amendments are made:

a. In sections III. and IV., redesignate footnotes 37 through 57 as footnotes 38 through 58;

b. In section III.C.2., the three existing paragraphs are designated as III.C.2.a. through III.C.2.c., and a new section III.C.2.d. is added with a new footnote 37; and

c. In Attachment III, under Category 2, a new paragraph 12 is added. The revision and additions read as follows:

## Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

2. * * *

d. This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[37]

* * * * *

[37] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in other countries in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement

Continued

**Attachment III—Summary of Risk Weights and Risk Categories for Bank Holding Companies**

* * * * *

Category 2: 20 Percent * * *

12. Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 27, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

## Federal Deposit Insurance Corporation

*12 CFR Chapter III*

For the reasons set forth in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. In appendix A to part 325, section II.B.3., the phrase ''U.S. depository institutions and foreign banks'' is removed and the phrase ''U.S. depository institutions, foreign banks, and qualifying OECD-based securities firms'' is added in its place.

3. In appendix A to part 325:

a. In section II.C., under *Category 2—20 Percent Risk Weight*, add a new sentence immediately after the existing first sentence;

b. Redesignate footnotes 23 through 42 as footnotes 24 through 43;

c. Add a new footnote 23; and

d. In Table II, add a new paragraph (13) under *Category 2—20 Percent Risk Weight.*

## Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

*Category 2–20 Percent Risk Weight*

* * * This category also includes claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.[23]

* * *

* * * * *

**Table II—Summary of Risk Weights and Risk Categories**

* * * * *

*Category 2–20 Percent Risk Weight*

* * * * *

(13) Claims on, and claims guaranteed by, qualifying securities firms incorporated in the OECD-based group of countries.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 17th day of October, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

## Office of Thrift Supervision

For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends part 567 of chapter V of title 12 of the Code of Federal Regulations as follows:

## PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended by adding paragraph (a)(1)(ii)(T) to read as follows:

**§ 567.6 Risk-based capital credit risk-weight categories.**

(a) * * *

(1) * * *

(ii) * * *

(T) Claims on, and claims guaranteed by, a qualifying securities firms incorporated in an OECD-based country.

(*1*)(*i*) A qualifying securities firm incorporated in the United States must be a broker-dealer that is registered with the Securities and Exchange Commission (SEC). It must be subject to and comply with the SEC's net capital rule (17 CFR 240.15c3(1), margin regulations and other regulatory requirements applicable to a registered broker-dealer.

(*ii*) A qualifying securities firm incorporated in any other OECD-based country must be a security firm that is subject to consolidated supervision and regulation (covering its subsidiaries, but not necessarily its parent organization) comparable to that imposed on depository institutions under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998).

(*2*) A qualifying securities firm (or its parent consolidated group) must also have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization. The rating must be in one of the three highest investment grade categories used by the ratings agency.

* * * * *

By the Office of Thrift Supervision.

Dated: November 3, 2000.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–30615 Filed 12–5–00; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; Waiver of the Nonmanufacturer Rule

**AGENCY:** Small Business Administration.

**ACTION:** Proposed waiver of rule.

**SUMMARY:** The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Surge Arresters, Current and Voltage Transformers, Disconnected Switches, Sultotransformers, Power Transformers (multiple winding type), Insulator Assemblies for transmission lines (porcelain and polymer type), and Stacking Post Insulators. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors

and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest investment grade rating categories used by the rating agency.

[23] With regard to securities firms incorporated in the United States, qualifying securities firms are those securities firms that are broker-dealers registered with the Securities and Exchange Commission (SEC). They must be subject to and in compliance with the SEC's net capital rule, 17 CFR 240.15c3–1, and subject to the margin and other regulatory requirements applicable to registered broker-dealers. With regard to securities firms incorporated in any other country in the OECD-based group of countries, qualifying securities firms are those securities firms that are subject to consolidated supervision and regulation (covering their direct and indirect subsidiaries, but not necessarily their parent organizations) comparable to that imposed on banks in OECD countries. Such regulation must include risk-based capital requirements comparable to those applied to banks under the Accord on International Convergence of Capital Measurement and Capital Standards (1988, as amended in 1998) (Basel Accord). Furthermore, any qualifying securities firm, or its parent consolidated group, must have a long-term issuer credit rating, or a rating on at least one issue of long-term unsecured debt, from a nationally recognized statistical rating organization that is in one of the three highest rating categories used by the rating agency.

available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

**DATES:** Comments and sources must be submitted on or before December 12, 2000.

**ADRESSES:** Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Tel: (202) 619–0422.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, (202) 619–0422, FAX (202) 205–6845.

**SUPPLEMENTARY INFORMATION:** Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found a 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Surge Arresters (SIC 3643, NAICS 335931), Current and Voltage Transformers (SIC 3612, NAICS 335311), Disconnect Switches (SIC 3613, NAICS 335313), Sutotransformers (SIC 3612, NAICS 335311), Power Transformers (multiple winding type) (SIC 3612, NAICS 335311), Insulator Assemblies for transmission lines (porcelain and polymer type) (SIC 3264/3644, NAICS 327113/335932), and Stacking Post Insluators (SIC 3264, NAICS 3327113), and invites the public to comment or provide information on potential small business manufacturers for these products.

In an effort to identify potential small business manufacturers, the SBA has searched Procurement Marketing & Access Network (PRO-Net) and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for these classes of products.

Dated: November 21, 2000.

**Luz A. Hopewell,**

*Associate Administrator for Government Contracting.*

[FR Doc. 00–30779 Filed 12–5–00; 8:45 am]

**BILLING CODE 8025–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–260–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 Series Airplanes; Model MD–88 Airplanes; and Model MD–90–30 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 McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes.

This proposal would require repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. This action is necessary to prevent various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 22, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–260–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–260–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (526) 627–5346; fax (562) 627–5210.

**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 action may be changed in light of the comments received.

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 proposed 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 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–260–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. 2000–NM–260–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports that, during ground operations or when powered in flight by the air driven generator, the electric motors of the auxiliary hydraulic pump and associated motor feeder cables failed on certain McDonnell Douglas Model MD–80, DC–10, MD–10, MD–11, and MD–90–30 series airplanes. These failures consisted of seized or difficult to turn rotor on the pump assembly, burnt and shorted motor feeder cables, and/or uncontained internal electric arcing failures with the electric motor. Investigation revealed that these failures may be caused by hydraulic fluid contamination to the electric motor portion of the pump, failed rotor bearing, and/or degradation of the stator's encapsulate material. These conditions, if not corrected, could result in a fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure.

**Other Relevant Rulemaking**

This proposed AD affects McDonnell Douglas Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes (*i.e.*, MD–80 series airplanes); Model MD–88 airplanes; and Model MD–90–30 series airplanes. The FAA is planning to issue a separate rulemaking action for McDonnell Douglas Model DC–10 series airplanes, Model MD–10 series airplanes, and Model MD–11 series airplanes to address the identified unsafe condition.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); and McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes). These service bulletins describe procedures for repetitive inspections of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. The corrective actions involve replacing the auxiliary hydraulic pump with a serviceable pump, troubleshooting, and repairing the wiring.

**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 accomplishment of the actions specified in the service bulletins described previously.

**Interim Action**

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

**Cost Impact**

There are approximately 1,292 Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes; Model MD–88 airplanes; and Model MD–90–30 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 697 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, 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 $41,820 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 proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**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:

**McDonnell Douglas:** Docket 2000–NM–260–AD.

*Applicability:* Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999; and Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 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 (e) 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 various failures of electric motors of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

**Inspection**

(a) Do a detailed inspection of the number 1 and 2 electric motors of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated 3,000 total flight hours or more as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(2) For airplanes that have accumulated less than 3,000 total flight hours as of the effective date of this AD: Inspect within 12 months after accumulating 3,000 total flight hours.

**Condition 1, No Failures: Repetitive Inspections**

(b) If no failures are detected during the inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

**Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections**

(c) If any pump motor fails during any inspection required by paragraph (a) of this AD, before further flight, replace the failed auxiliary hydraulic pump with a serviceable pump, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

**Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection**

(d) If any wiring fails during any inspection required by paragraph (a) of this AD, before further flight, troubleshoot and repair the failed wiring, per McDonnell Douglas Alert Service Bulletin MD80–29A067, dated October 21, 1999 (for Model DC–9–81, –9–82, –9–83, and –9–87 series airplanes, and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–29A018, dated October 21, 1999 (for Model MD–90–30 series airplanes); as applicable. Repeat the inspection required by paragraph (a) of this AD every 5,000 flight hours.

**Alternative Methods of Compliance**

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

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

**Special Flight Permit**

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

Issued in Renton, Washington, on November 30, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–31067 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–12–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Arrius Models 2B, 2B1, 2F Turboshaft Engines

**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 Turbomeca S.A. Arrius Models 2B, 2B1, and 2F turboshaft engines. This proposal would require the replacement of the right injector half manifold, left injector half manifold, and privilege injector pipe with the engine installed on the helicopter. This proposal is prompted by reports from the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, of partially or totally blocked fuel injection manifolds, which were found during inspections at a repair workshop. The actions specified by the proposed AD are intended to prevent engine flameout during rapid deceleration, or the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating. The actions are also intended to prevent injector air path cracks, due to blockage of the fuel injection manifolds.

**DATES:** Comments must be received by February 5, 2001.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; fax: (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152; fax: (781) 238–7199.

**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 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 action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–12–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

The DGAC recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 2B, 2B1, and 2F turboshaft engines. The DGAC advises that during inspections performed at a repair workshop, some right injector half manifolds, left injector half manifolds, and privilege injector pipes were found totally or partially blocked. This condition may cause engine flameout during engine deceleration or the inability to maintain the 2.5 minutes OEI rating. This condition may also cause injector air path cracking.

## Manufacturer's Service Information

Turbomeca has issued alert service bulletin (ASB) No. A319 73 2012, Revision 2, dated May 25, 1999, for Arrius 2B and 2B1 turboshaft engines and ASB No. A319 73 4001, Revision 3, dated May 25, 1999, for Arrius 2F turboshaft engines. These ASB's require the replacement of the right injector half manifold, left injector half manifold, and privilege injector pipes, based on operating hours and power check performance. When replacing the manifolds for the first time, the ASB's also require a borescope inspection of the flame tube and the high pressure turbine (HPT) area. The DGAC classified these ASB's as mandatory and issued AD 1999–217(A) and AD 1999–233(A) in order to assure the airworthiness of these Turbomeca turboshaft engines in France.

## Bilateral Agreement Information

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

## Proposed Requirements of this AD

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:

- Replacement of the right injector half manifolds, left injector half manifolds, and privilege injector pipes with 200 or more hours time-in-service (TIS) on the effective date of the proposed AD within 30 days after the effective date of the proposed AD.
- Thereafter, the injector manifolds must be replaced within 200 hours TIS since last replacement.

Those actions would be required to be accomplished in accordance with the ASB's described previously.

## Economic Impact

There are about 130 engines of the affected design in the worldwide fleet. The FAA estimates that 22 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take about 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost about $14,320.00 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $317,680.00 for initial inspection and parts replacement. The manufacturer has advised the DGAC that the operator may exchange the removed injection manifolds, at no cost to the operator, thereby substantially reducing the cost impact of this proposed rule.

## Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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:

**Turbomeca:** Docket No. 2000–NE–12–AD.

*Applicability:* This airworthiness directive (AD) is applicable to Arrius Models 2B, 2B1, and 2F engines. These engines are installed on but not limited to Eurocopter France Model EC120B and Eurocopter Deutschland EC135 T1 rotorcraft.

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

Compliance with the following initial and repetitive replacement procedures are required unless already done.

Perform the following actions to prevent engine flameout and the inability to maintain the 2.5 minutes one engine inoperative (OEI) rating due to blockage of the fuel injection manifolds.

**Initial Replacement**

(a) Replace injector manifolds and borescope—inspect the flame tube and the high pressure turbine area within 30 days after the effective date of this AD, or prior to exceeding 200 hours time-in-service (TIS) since new, whichever is later. Do this in accordance with 2.A. through 2.C.(3) (except for recording requirement) of Turbomeca Alert Service Bulletin (ASB) No. A319 73 2012 for Arrius 2B and 2B1 turboshaft engines, and ASB No. A319 73 4001 for Arrius 2F turboshaft engines.

**Repetitive Replacements**

(b) Thereafter, replace injector manifolds within 200 hours TIS since last replacement, or prior to further flight after performing a flight manual power check if the power check shows a negative turbine outlet temperature (TOT) or negative T4 margin.

(c) After the effective date of this AD, do not install any injector manifold with 200 hours TIS since new or greater onto an engine.

**Alternative Methods of Compliance**

(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, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

**Special Flight Permits**

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

Issued in Burlington, Massachusetts, on November 30, 2000.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–31114 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–U

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 270

**[Release No. IC–24775; File No. S7–20–00]**

**RIN 3235–AH57**

## Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing amendments to the rule under the Investment Company Act of 1940 that permits a registered investment company (''fund'') that has certain affiliations with an underwriting participant to purchase securities during an offering. The proposed amendments would expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering. The proposed amendments also would modify the rule's quantitative limit on purchases, to cover purchases by a fund as well as any account advised by the fund's investment adviser. These amendments are intended to respond to recent changes in the method of offering certain government securities, and to improve the effectiveness of the quantitative limit on fund purchases.

**DATES:** Comments must be received on or before February 15, 2001.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–20–00; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Curtis A. Young, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

**SUPPLEMENTARY INFORMATION:** The Commission today is requesting public comment on proposed amendments to rule 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or ''Act''). [1]

### I. Discussion

*A. Background*

Section 10(f) of the Investment Company Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter [2] for the security (''affiliated underwriter'').[3] This provision was designed to protect funds and their investors from the ''dumping'' of unmarketable securities on a fund in order to benefit the fund's affiliated underwriter.[4] Section 10(f) is a broad

[1] Unless otherwise noted, all references to ''rule 10f–3'' or any paragraph of the rule will be to 17 CFR 270.10f–3.

[2] *See* section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a–2(a)(29)] (definition of principal underwriter).

[3] Section 10(f) [15 U.S.C. 80a–10(f)] prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. For purposes of this Release, a person that falls within one of these categories is referred to as an ''affiliated underwriter,'' even though the Investment Company Act defines the term ''affiliated person'' to include a broader set of relationships. *See* section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)]. Similarly, this Release refers to a fund that is subject to section 10(f) as a result of its relationship with an ''affiliated underwriter'' as an ''affiliated fund.''

[4] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy). An underwriter could, for example, ''dump'' unmarketable securities on its controlled fund, either by causing the fund to purchase the securities from the underwriter itself,

Continued

prohibition, and Congress included in the provision specific authority for the Commission to issue rules or orders exempting transactions from the prohibition, if consistent with the protection of investors.

Rule 10f–3, which the Commission adopted in 1958 and last amended in 1997, permits a fund to purchase securities in a transaction that section 10(f) would prohibit, if certain conditions are met.[5] The conditions of rule 10f–3 are designed to ensure that the purchases are not likely to raise the concerns that section 10(f) was enacted to address, and are thus consistent with the protection of investors.[6]

*B. Purchase of Government Securities*

When the Commission first adopted rule 10f–3 in 1958, one of the conditions of the rule was that the securities be registered under the Securities Act of 1933 (''Securities Act'') as part of a public offering.[7] This condition served to assure that the fund did not purchase the securities through a private placement,[8] and provided the basis for other conditions of the rule concerning the timing and conduct of the public offering.[9] Since then, in response to changes in the methods of offering securities and other developments, we have revised the rule to permit the purchase of certain types of securities that are not registered under the Securities Act, such as municipal securities and securities offered through regulated foreign offerings or private institutional offerings. We determined that the circumstances in which these securities generally are offered, including the availability of relevant information about the issuer and the establishment of a uniform offering price, provided an effective substitute for the Securities Act registration requirement.[10]

Government securities,[11] including securities issued by agencies or instrumentalities of the U.S. government,[12] are not included in the types of securities that rule 10f–3 permits affiliated funds to purchase. Until recently, there has been little need to exempt the purchase of government securities from section 10(f), because these securities generally have not been offered through ''selling syndicates'' or underwritings that involve affiliated underwriters to a significant degree.[13] In 1998, however, at least two government-sponsored enterprises began to offer their securities through syndicated underwritings.[14] Because rule 10f–3 does not provide an exemption from section 10(f) for affiliated funds to purchase government securities, affiliated funds have been unable to purchase securities in those offerings, and investors in those funds have been unable to benefit from the purchases their funds otherwise would have been able to make.[15]

The Commission is proposing to amend rule 10f–3 to permit affiliated funds to purchase government securities during the existence of an underwriting or selling syndicate for those securities.[16] Government securities are high-quality investments, and therefore are unlikely to be dumped into a fund. Moreover, the circumstances under which government agencies offer their securities to the public appear to be an effective substitute for Securities Act registration for purposes of rule 10f–3. Government agencies generally must obtain approval from the Department of Treasury concerning the timing, price, and terms of the securities offering.[17] In addition, information about these

or by encouraging the fund to purchase securities from another member of the underwriting syndicate. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996) [61 FR 13630 (Mar. 27, 1996)] (''1996 Release''), at text accompanying n.2.

[5] Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) the securities either are registered under the Securities Act, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a ''firm commitment'' underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) if the securities are municipal securities, the purchase is not a group sale; and (vi) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b).

[6] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] (''1997 Release'').

[7] *See* Notice of Proposal to Adopt Rule N–10F–3 Permitting Investment Companies to Purchase Securities Where Affiliates Participate in Underwriting, Investment Company Act Release No. 2744 (July 15, 1958) (noting that proposed conditions were consistent with prior exemptive relief granted by the Commission).

[8] In private placements at that time, obtaining adequate information about the issuer and a fair price and other favorable terms for the securities depended mostly on the efforts of the purchaser. *See* Eli Shapiro and Charles R. Wolf, *The Role of Private Placements in Corporate Finance* 1–7 (1972).

[9] *See, e.g.,* rule 10f–3(b)(2)(i) (requiring that securities be purchased at no more than the public offering price on the first day of the offering).

[10] *See* 1996 Release, *supra* note 4, at nn.31–51 and accompanying text. In addition, the other protections of rule 10f–3 continued to apply to purchases of these types of securities.

[11] The term ''government securities'' is defined by the Investment Company Act as ''any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.'' 15 U.S.C. 80a–2(a)(16). Government securities are exempt from the registration requirements of the Securities Act and from the reporting and other requirements of the Securities Exchange Act of 1934 (''Exchange Act''). *See* 15 U.S.C. 77c(a)(2), 78c(a)(12)(A). Offers of or transactions in government securities are subject, however, to the anti-fraud provisions of the Securities Act and Exchange Act. *See* 15 U.S.C. 77q(a), 78j(b).

[12] Government securities may be issued by government-sponsored enterprises such as the Federal National Mortgage Association (''FNMA'') and by government corporations such as the Federal Deposit Insurance Corporation. *See* 31 U.S.C. 9101 (definition of ''government corporation''); A. Michael Froomkin, *Reinventing the Government Corporation,* 1995 U. Ill. L. Rev. 543, 555–56.

[13] U.S. Treasury securities are sold through a system involving auctions and dealers, while government corporations primarily raise money through the Federal Financing Bank, which is part of the Department of Treasury. *See* U.S. Department of Treasury, Office of Market Finance, *United States of America: U.S. Treasury Security Auctions* (Aug. 12, 1998); Frank J. Fabozzi, *Treasury and Agency Securities,* in The Handbook of Fixed Income Securities 157 (Frank J. Fabozzi ed., 1997). *See also* 12 U.S.C. 2285 (sale of government corporation securities by Federal Financing Bank). Purchases of government securities in these circumstances therefore probably would not involve an ''underwriting or selling syndicate'' under section 10(f). *See* Institutional Liquid Assets, SEC No-Action Letter (Dec. 16, 1981) (staff agreed that the broker-dealer, which participated with other broker-dealers in distributions of Federal Home Loan Bank notes, was not a principal underwriter in an ''underwriting or selling syndicate'' for purposes of section 10(f)).

[14] *See* Chris O'Leary, *Fannie Mae to Launch Rival Treasury Note as Benchmark,* Investment Dealer's Digest, Jan. 5, 1998, at 9; Adam Reinebach, *Fannie Mae Sells $4 Billion Benchmark Notes Offering,* Investment Dealer's Digest, Jan. 19, 1998, at 4, 5; Joshua Brockman, *Wall Street Watch: Second Fannie Benchmark Issue Draws More Europeans,* American Banker, Feb. 10, 1998, at 15; and *Freddie Prices $400 MM Offering,* National Mortgage News, Mar. 23, 1998, at 2.

In response to these developments in the offering of government securities, the Commission has received a request to permit affiliated funds to purchase these securities in syndicated underwritings. *See* Memorandum from Brown & Wood to the Division of Investment Management, Securities and Exchange Commission (1998) (available to the public in File No. S7–20–00).

[15] A fund that is unable to purchase securities in a primary offering may be able to purchase the securities in the secondary market, but often at a higher price or with additional transaction costs. *See* 1997 Release, *supra* note 6, at text accompanying n.13.

[16] Proposed rule 10f–3(b)(1)(ii).

[17] The Department of Treasury establishes a general calendar for securities offerings that includes sale announcement, pricing, trading release, and settlement dates. *See* Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market D–1 (1992). *See also* 12 U.S.C. 2286 (Treasury authorization of issuance of government securities); 31 U.S.C. 9108 (same).

securities typically is available to the public through prospectuses or similar offering documents,[18] and these securities trade actively in the secondary market.[19] Under the proposed amendments, the other restrictions of rule 10f–3, such as limitations on the price and quantity of securities purchased, would apply to the purchase of government securities by the fund.[20]

The Commission requests comment on the proposed amendments related to government securities. Should the rule include limitations on the purchase of government securities that do not apply to other securities purchased under the rule? For example, should rule 10f–3 require that government securities receive a certain credit rating from a Nationally Recognized Statistical Rating Organization (''NRSRO''), as is required for municipal securities? [21] Should any of the limitations included in rule 10f–3 not apply to purchases of government securities?

*C. Purchases Covered by the Percentage Limit*

One of the key conditions of rule 10f–3 is that a fund, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of an offering (''percentage limit''). The purpose of the percentage limit is to provide an indication that a significant portion of an offering is being purchased by persons acting independently of the adviser. The existence of these purchasers demonstrates that the securities are not being ''dumped'' and suggests that the price of the securities is based on market forces.

Since amending rule 10f–3 in 1997, we have become aware of a possible ''loophole'' in the rule that could permit an investment adviser to circumvent the percentage limit and compromise the effectiveness of the rule. Although the percentage limit requires that an adviser aggregate the purchases of all the funds that it advises, the rule does not require that the adviser also aggregate purchases by its other (*i.e.,* non-fund) clients. As a result, if an adviser purchases most or all of an offering for its fund clients and non-fund clients, the percentage limit may not provide a reliable indicator of market forces.[22] The adviser could use these controlled accounts to assure the success of the affiliated underwriting, thus undermining an important protection that section 10(f) provides fund shareholders.

In order to assure the effectiveness of the percentage limit of rule 10f–3, we are proposing to amend the rule to include purchases by any other account over which the adviser has discretionary authority or exercises control. Therefore, if a fund purchases securities in reliance on rule 10f–3, the fund's purchases, aggregated with purchases by any other fund advised by the fund's adviser, and any other account over which the fund's adviser has discretionary authority or otherwise exercises control, could not exceed 25 percent of the offering.[23]

The Commission requests comment on the proposed amendment to the percentage limit. Should we increase the percentage in light of the changes that we are now proposing?

**II. General Request for Comments**

Any interested persons wishing to comment on the rule changes that are the subject of this Release, to suggest additional changes, or to comment on other matters that might have an effect on the proposals contained in this Release, are requested to submit written comments. Comment is specifically requested whether the Commission should amend or eliminate conditions in rule 10f–3 other than those addressed in this Release.

The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act.[24] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, [25] the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

**III. Cost-Benefit Analysis**

*A. Purchase of Government Securities*

The proposed amendments to rule 10f–3 should, if adopted, increase the ability of funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates. The benefits to funds would include the ability to purchase government securities in syndicates involving an underwriter affiliated with the fund's investment adviser, without having to seek an exemptive order from the Commission. The potential benefits to fund investors would include better investment performance, and possibly lower fund expenses.

The costs to funds and investors of the proposed amendments should be small. Funds would be required to determine whether purchases of government securities comply with the conditions of the rule. The additional cost of determining compliance with the rule's conditions, as applied to purchases of government securities, should be minimal. Funds also would be required to (i) maintain a written record of each purchase of government securities made in reliance on the proposed amendments and (ii) report those transactions on Form N–SAR. Rule 10f–3 currently requires funds relying on the rule to comply with these recordkeeping and reporting requirements. The additional costs of complying with these requirements with respect to purchases of government securities made in reliance on the proposed amendments would be minimal and likely would be justified by the potential benefits to funds and investors described above.

*B. Purchases Covered by the Percentage Limit*

The proposed amendments would require that the total of the fund's purchases in any offering purchased by the fund in reliance on the rule, aggregated with purchases in the offering by any other fund advised by the fund's adviser, and purchases in the offering by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent

[18] *See* U.S. General Accounting Office, Government-Sponsored Enterprises: Changes in Securities Distribution Process and Use of Derivative Products 48–49 (1993).

[19] Frank J. Fabozzi, *Treasury and Agency Securities,* in The Handbook of Fixed Income Securities 158 (Frank J. Fabozzi ed., 1997). *See also* B.J. Reed and John W. Swain, Public Finance Administration 227 (1997).

[20] *See* rule 10f–3(b).

[21] *See* rule 10f–3(a)(3).

[22] The adviser, for example, could arrange for its fund clients to purchase 25 percent of an offering and for its non-fund clients to purchase the remaining 75 percent of the offering.

[23] *See* proposed rule 10f–3(b)(7). In a different context, the Gramm-Leach-Bliley Act recently amended section 2(a)(19) of the Investment Company Act to include language that is parallel to the proposed rule amendments. As amended, a person is an ''interested person'' of a fund or adviser (and is therefore disqualified from being an independent director) if, among other things, she (or her affiliate) has executed portfolio transactions for the fund, any other fund advised by the fund's adviser, or ''any account over which the [fund's] adviser has brokerage placement discretion.'' Pub. L. No. 106–102, 113 Stat. 1338 (1999), to be codified at 15 U.S.C. 6801–6809.

[24] Section 2(c) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 80a–2(c).

[25] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

of the offering. The proposed amendments will benefit funds and their investors by closing a loophole in the percentage limit. By doing so, the rule will reduce the likelihood that the fund's adviser is circumventing the percentage limit, and will thereby minimize the risk that fund investors will be harmed by the dumping of unmarketable securities into their funds.[26] With respect to costs, the proposed amendments will require a fund or its adviser to monitor the purchases of non-fund accounts over which the fund's adviser has discretionary authority or otherwise exercises control. The cost of this monitoring is likely to be minimal, because this information should be readily available to the fund's adviser.

*C. Request for Comments*

The Commission requests comment on the potential costs and benefits of the proposed amendments and any suggested alternatives to the proposal. Data are requested concerning these costs and benefits.

**IV. Paperwork Reduction Act**

Certain provisions of the proposed amendments to rule 10f–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''PRA''), and the Commission is submitting the proposed amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is ''Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate.'' Rule 10f–3 contains currently approved collections of information under OMB control number 3235–0226. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*A. Purchase of Government Securities*

Rule 10f–3 permits a fund to purchase securities, from an unaffiliated underwriter, in an underwriting of securities in which an affiliated underwriter is a member of the underwriting or selling syndicate. The proposed amendments to rule 10f–3 would permit a fund to purchase government securities under the conditions of the rule.

Rule 10f–3 requires the board of directors of a fund relying on the rule to approve procedures that are reasonably designed to ensure compliance with the conditions of the rule, and to approve changes to these procedures as necessary. The fund must maintain these procedures permanently in an easily accessible place. A fund that chooses to rely on the proposed amendments also may need to amend these procedures to account for purchases of government securities. The fund also must report on Form N–SAR any transactions under the rule and attach a written record of each transaction, and the board must review the transactions quarterly to determine compliance with the fund's procedures.[27] Finally, a fund must retain written records of the rule 10f–3 transactions and of the information reviewed by the board, for at least six years from the end of the fiscal year in which the transactions occurred. A fund would need to comply with these recordkeeping requirements in order to obtain the benefit of exemption from section 10(f) of the Act for purchases of government securities under the proposed amendments.

The collections of information are necessary to provide the Commission with information regarding compliance with rule 10f–3. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under paragraph (b)(11)(ii) of rule 10f–3, none of the information required to be collected or disclosed for PRA purposes will be kept confidential. If the records required to be kept under these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

The Division of Investment Management estimates that 300 funds rely upon rule 10f–3 each year, and that 70 of those funds purchase government securities (although not all 70 funds would likely need to rely upon rule 10f–3 to purchase government securities). It is estimated that the recordkeeping burden for funds that rely on the proposed amendments to purchase government securities would increase by an estimated 0.25 hours per fund per year.[28]

*B. Purchases Covered by the Percentage Limit*

The recordkeeping burden for funds that rely on rule 10f–3 may minimally increase due to the condition that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any other account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

*C. Comments*

The Commission solicits comments under 44 U.S.C. 3506(c)(2)(B) concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; the accuracy of the staff's estimate of the burden of the proposed collection of information; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget (''OMB''), Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th St., NW., Washington, DC 20549–0609 with reference to File No. S7–20–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–20–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

[26] *See supra* Section I.C.

[27] The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. *See* rule 10f–3(b)(9).

[28] The total additional burden of the proposed amendments concerning the purchase of government securities is estimated to be 17.5 hours per year. This estimate is based on the following: 70 funds x 0.25 hours = 17.5 hours.

## V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding amendments to rule 10f–3 under the Investment Company Act. The following summarizes the IRFA.

Section 10(f) prohibits investment companies from purchasing government securities from an affiliated underwriter during the existence of an underwriting or selling syndicate for that security, and authorizes the Commission to exempt transactions by rule or order from the prohibition. The Commission adopted rule 10f–3 to permit a fund to purchase securities from an unaffiliated member of an underwriting or selling syndicate when an affiliated underwriter is a member of the underwriting or selling syndicate. We are proposing amendments to rule 10f–3 in response to the recent syndicated underwriting of government securities issued by government-sponsored enterprises.[29] The proposed amendments are designed to permit funds to purchase government securities in syndicated offerings, in accordance with other conditions of rule 10f–3.[30] We are also proposing amendments in response to concerns that purchases by advisory clients other than funds may undercut the effectiveness of the percentage limit of the rule. To address this concern the Commission is proposing that the total of the fund's purchases in any offering, aggregated with purchases of any other fund advised by the fund's adviser, and purchases by any account over which the fund's adviser has discretionary authority or otherwise exercises control, not exceed 25 percent of the offering.

A small business or small organization (collectively, ''small entity'') for purposes of the Investment Company Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[31] Of approximately 3900 active funds, 339 are small entities. Any of these 339 funds would be able to rely on the proposed amendments to rule 10f–3. It appears that the proposed amendments would affect small entities in the same manner as other entities subject to section 10(f), and that the proposed amendments increase flexibility for all funds.

The IRFA states that purchases of government securities made in reliance on rule 10f–3 would be subject to the existing and amended reporting and recordkeeping requirements of the rule.[32] There are no rules that duplicate, overlap, or conflict with the proposed amendments. The IRFA also discusses the absence of any viable alternatives considered by the Commission in connection with the proposed amendments that might minimize the effect on small entities.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rule amendments. Comment is also requested on the effect of the rule amendments on investment advisers and funds that are small entities. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule amendments. A copy of the IRFA may be obtained by contacting Curtis A. Young, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

## VI. Statutory Authority

The Commission is proposing to amend rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)].

## List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Amend § 270.10f–3 by revising paragraphs (b)(1), (b)(4) and (b)(7).

### § 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a–10(f)) will be exempt from the provisions of that section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii)Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

* * * * *

(4) *Continuous operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a–aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

* * * * *

(7) *Percentage limit.* The amount of securities of any class of such issue purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and purchases by any other account over which such adviser has discretionary authority or otherwise exercises control, do not exceed the following limits:

(i) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(ii) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(A) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

[29] *See supra* note 14.

[30] The amendments to rule 10f–3 are proposed by the Commission under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act.

[31] Rule 0–10 [17 CFR 270.0–10].

[32] A fund would be required to report purchases of government securities on Form N–SAR, attach a written record of each transaction, and keep a copy of the written records of those transactions. *See* rule 10f–3(b).

(B) The principal amount of the offering of such class in any concurrent public offering.

* * * * *

By the Commission.

Dated: November 29, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–30975 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–116495–99]**

**RIN 1545–AX68**

## Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document contains a notice of public hearing on proposed regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries.

**DATES:** The public hearing is being held on January 17, 2001 at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by December 27, 2000.

**ADDRESSES:** The public hearing is being held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC (REG–116495–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG–116495–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Sonya M. Cruse at (202) 622–7805 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed regulations (REG–116495–99) that was published in the **Federal Register** on July 31, 2000 (65 FR 46677).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by December 27, 2000.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

[FR Doc. 00–31083 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 31

**[REG–114423–00]**

**RIN 1545–AY47**

## Federal Employment Tax Deposits—De Minimis Rule

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** These proposed regulations affect taxpayers required to make deposits of Federal employment taxes. This document contains proposed regulations which change the de minimis deposit rule for quarterly and annual return periods.

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronically generated comments and requests for a public hearing must be received by March 6, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–114423–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–114423–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Brinton T. Warren, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to section 6302. The temporary regulations change the de minimis rule for the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed

rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 31.6302–1, paragraph (f)(4) is revised to read as follows:

**§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.**

* * * * *

(f) * * *

(4) [The text of proposed § 31.6302–1(f)(4) is the same as the text of § 31.6302–1T(f)(4)].

* * * * *

**Charles O. Rossotti,**

*Commissioner of Internal Revenue.*

[FR Doc. 00–30792 Filed 12–5–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Tampa 00–054]**

**RIN 2115–AA97**

## Safety Zone Regulations: Tampa Bay, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the regulations for floating safety zones around Liquefied Petroleum Gas (LPG) vessels transiting the waters of Tampa Bay. This action is necessary due to the opening of a new LPG facility in Port Sutton. This proposal will enhance public and maritime safety by minimizing meeting and overtaking situations between other vessels and LPG vessels.

**DATES:** Comments and related material must reach the Coast Guard on or before February 5, 2001.

**ADDRESSES:** You may mail comments and related material to Marine Safety Office Tampa (COTP Tampa 00–054), 155 Columbia Drive, Tampa Florida 33606. The Waterways Management Branch of Marine Safety Office Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606, Attention: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

**SUPPLEMENTARY INFORMATION:**

**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 this rulemaking (COTP Tampa 00–54), 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 during the comment period. We may change this proposed 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 Coast Guard Marine Safety Office Tampa at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Starting in June 2000, SEA–3, a new LPG facility, started operations and expects to receive approximately six (6) LPG vessels per year. Prior to the opening of the SEA–3 facility, all LPG vessels calling on Tampa Bay received a safety zone in accordance with 33 CFR 165.704. To enhance public and marine safety and to minimize meeting and overtaking situations, the Coast Guard is looking to amend the safety zone transit requirements for LPG vessels by adding a new section that mirrors the established safety zone requirements for Anhydrous Ammonia (NH3) vessels that call on Port Sutton. The current LPG regulations which start at Tampa Bay Cut ''J'' provide safety zone requirements for LPG vessels calling at the LPG facility located at Rattlesnake and will remain as is, except for standardizing the moving safety zone size which will minimize confusion and provided consistency throughout all of the port's safety zones. The revisions include standardizing the safety zone surrounding LPG vessels from 500 yards to 1000 yards and replacing the safety zone extending 50 feet waterside while the vessel is moored, with a requirement calling for passing vessels to provide a 30 minute notification allowing the LPG vessel time to take appropriate safety precautions.

In the late 1980's and early 1990's, many safety changes were made to the port, including the widening and deepening of the shipping channels,

installation of centerline range marks, inbound and outbound, an increased brightness in range lights, and a new Vessel Traffic Advisory System (VTAS). These changes have enhanced the level of safety on the navigable waters of Tampa Bay. Incorporating these amendments will further enhance safety on the waters of Tampa Bay.

**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 the order. It has been exempted from review by the Office of Management and Budget 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 proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation is needed to ensure public safety in a limited area of Tampa Bay.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field 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 regulations will only be in effect approximately six (6) times per year in a limited area of Tampa Bay. Meeting or overtaking of the vessel is permitted between Gadsden Cut buoys #3 and #7; therefore, the impact on other waterway users is expected to be minimum.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520.).

**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. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would 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 proposed rule and concludes that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

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

In consideration of the foregoing, the Coast Guard amends 33 CFR part 165, as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 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.

2. Revise § 165.704 to read as follows:

**§ 165.704 Safety Zone; Tampa Bay, Florida.**

(a) A floating safety zone is established consisting of an area 1000 yards fore and aft of a loaded Liquefied Petroleum Gas (LPG) vessel and the width of the channel in the following areas. Any vessels desiring to enter the safety zone must obtain authorization from the Captain of the Port Tampa.

(1) For vessels loaded with LPG and bound for the LPG receiving terminal in Port Sutton the safety zone starts at Tampa Bay Cut ''F'' Channel from Lighted Buoys ''3F'' and ''4F'' and proceeds north ending at Gadsden Point Cut Lighted Buoys ''3'' and ''4''. The safety zone starts again at Gadsden Point Cut Lighted Buoys ''7'' and ''8'' and proceeds north through Hillsborough Cut ''C'', Port Sutton Entrance Channel, and ends at the Port Sutton LPG facility.

(2) For vessels loaded with LPG and bound for the LPG receiving terminal in Rattlesnake the safety zone starts at Tampa Bay Cut ''J'' Channel from lighted buoy ''10J'' and proceeds north through Tampa Bay Cut ''K'' Channel to buoy ''11K.'' When a loaded LPG vessel departs the marked channel at Tampa Bay Cut ''K'' buoy ''11K'' enroute to Rattlesnake, Tampa, FL, the floating safety zone extends 500 yards in all directions surrounding the loaded LPG vessel, until it arrives at the entrance to Rattlesnake. While the loaded LPG vessel is maneuvering in the Rattlesnake slip and until it is safely moored at the LPG facility, the floating safety zone extends 150 feet fore and aft of the loaded LPG vessel and the width of the slip. Moored vessels are allowed within the parameters of the 150-foot safety zone.

(b) The floating safety zone is disestablished when the LPG carrier is safely moored at the LPG receiving facility.

(c) For outbound tank vessels loaded with LPG, the safety zone is established when the vessel departs the terminal

and continues through the area described in paragraph (a) of this section.

(d) All vessels over 5000 gross tons intending to pass LPG vessels moored in Port Sutton, and all vessels intending to pass LPG vessels moored in Rattlesnake, must give 30 minutes notice to the LPG vessel so it may take appropriate safety precautions.

(e) The general regulations governing safety zones contained in § 165.23 apply.

(f) The Coast Guard Captain of the Port Tampa will notify the maritime community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a marine broadcast Notice to Mariners.

(g) Should the actual time of entry of the LPG vessel into the safety zone vary more than one half (½) hour from the scheduled time stated in the broadcast Notice to Mariners, the person directing the movement of the LPG vessel shall obtain permission from Captain of the Port Tampa before commencing the transit.

(h) Prior to commencing the movement, the person directing the movement of the LPG vessel shall make a security broadcast to advise mariners of the intended transit. All additional security broadcasts as recommended by the U.S. Coast Pilot 5, ATLANTIC COAST, shall be made throughout the transit.

(i) Vessels carrying LPG are permitted to enter and transit Tampa Bay and Hillsborough Bay and approaches only with a minimum of three miles visibility.

(j) The Captain of the Port Tampa may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of port safety or environmental safety.

(k) The owner, master, agent or person in charge of a vessel or barge, loaded with LPG shall report, at a minimum, the following information to the Captain of the Port Tampa at least twenty-four (24) hours before entering Tampa Bay, its approaches, or departing Tampa Bay:

(1) The name and country of registry of the vessel or barge;

(2) The name of the port or place of departure;

(3) The name of the port or place of destination;

(4) The estimated time that the vessel is expected to begin its transit of Tampa Bay and the time it is expected to commence its transit of the safety zone(s); and

(5) The cargo carried and amount.

Dated: September 28, 2000.

**A.L. Thompson, Jr.,**

*Captain, Coast Guard, Captain of the Port, Tampa, Florida.*

[FR Doc. 00–31046 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–15–U

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Region II Docket No. NY44–215, FRL–6911–9]**

## Approval and Promulgation of Implementation Plans; New York; Nitrogen Oxides Budget and Allowance Trading Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New York. This SIP revision responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''$NO_X$ SIP Call.'' The SIP revision includes a narrative and a regulation that establish a statewide nitrogen oxides ($NO_X$) budget and a $NO_X$ allowance trading program that begins in 2003 for large electricity generating and industrial sources.

The intended effect of this SIP revision is to reduce emissions of $NO_X$ in order to help attain the national ambient air quality standard for ozone. EPA is proposing this action pursuant to section 110 of the Clean Air Act.

**DATES:** EPA must receive written comments on or before January 5, 2001.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal and other information are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Ted Gardella at (212) 637–3892 for general questions, Rick Ruvo at (212) 637–4014 for specific questions on the Trading Program, or Raymond Forde at (212) 637–3716 for specific questions on the Budget Demonstration; Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866.

**SUPPLEMENTARY INFORMATION:**

### Overview

The Environmental Protection Agency (EPA) is proposing to approve the New York State Department of Environmental Conservation's (New York's) $NO_X$ SIP Call State Implementation Plan (SIP) revision. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

I. EPA's Action
- A. What action is EPA proposing today?
- B. Why is EPA proposing this action?
- C. What are the $NO_X$ SIP Call general requirements?
- D. What is the $NO_X$ Budget and Allowance Trading Program?
- E. What guidance did EPA use to evaluate New York's program?
- F. What is the result of EPA's evaluation of New York's program?

II. New York's $NO_X$ Budget Program
- A. What is New York's $NO_X$ Budget Demonstration?
- B. What is New York's $NO_X$ Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. How does New York's program protect the environment?
- E. How will New York and EPA enforce the program?
- F. When did New York propose and adopt the program?
- G. When did New York submit the SIP revision to EPA and what did it include?
- H. What other significant items relate to New York's program?
- I. Impact of D.C. Circuit Court remand on New York's $NO_X$ SIP Call submittal.
- J. What is the relationship of today's proposal to EPA's findings under the section 126 rule?

III. Proposed Action

IV. Administrative Requirements

### I. EPA's Action

*A. What action is EPA proposing today?*

EPA proposes approval of revisions to New York's ground level ozone SIP which New York submitted on April 3, 2000 and April 18, 2000. These SIP revisions include a new regulation, 6 NYCRR Part 204, '' $NO_X$ Budget Trading Program,'' dated April 3, 2000, and a narrative entitled, ''New York State Implementation Plan For Ozone; Meeting The Statewide Oxides of Nitrogen ($NO_X$) Budget Requirements Contained In The $NO_X$ SIP Call (63 FR 57356, October 27, 1998),'' dated April 18, 2000 and supplemented on May 16, 2000. New York submitted the regulation and narrative, including $NO_X$ reducing measures, in order to strengthen its one-hour ozone SIP and to comply with the $NO_X$ SIP Call during each ozone season, *i.e.,* May 1 through September 30, beginning in 2003. EPA proposes that New York's submittal is fully approvable as a SIP strengthening measure for New York's one-hour ground level ozone SIP and EPA has determined it meets the air quality objectives of EPA's $NO_X$ SIP Call requirements. New York's SIP revision also satisfies Phase III of the Ozone Transport Commission's $NO_X$ Budget Program as discussed in section II.H. of this document.

*B. Why Is EPA Proposing This Action?*

EPA is proposing this action in order to:

- Approve a control program which reduces $NO_X$ emissions, a precursor of ozone, and which therefore helps to achieve the national ambient air quality standard for ozone,
- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act),
- Make New York's $NO_X$ allowance trading regulation federally enforceable and available for credit in the SIP,
- Make New York's SIP narrative, including the ozone season $NO_X$ budget, federally enforceable as part of the New York SIP, and
- Give the public an opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections.

*C. What Are the $NO_X$ SIP Call General Requirements?*

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''$NO_X$ SIP Call.'' See 63 FR 57356. At that time, the $NO_X$ SIP Call required 22 states and the District of Columbia [1] to meet statewide $NO_X$ emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The $NO_X$ SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999, and to implement control strategies by May 1, 2003.[2]

The $NO_X$ SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. However, the SIP Call notice suggested that imposing statewide $NO_X$ emissions caps on large fossil-fuel fired industrial boilers and electricity generators would provide a highly cost-effective means for states to meet their $NO_X$ budgets. In fact, the state-specific budgets were derived using an emission rate of 0.15 pounds $NO_X$ per million British thermal units (lb. $NO_X$/mmBtu) at electricity generating units (EGUs) with a nameplate capacity greater than 25 megaWatts, multiplied by the projected heat input (mmBTU) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions was based on an emissions trading program used to achieve part of an EGU control program. The $NO_X$ SIP Call state budgets also assumed on average a 30% $NO_X$ reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied to units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, to units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the $NO_X$ SIP Call final rulemaking included a model $NO_X$ allowance trading regulation, called ''$NO_X$ Budget Trading Program for State Implementation Plans,'' (40 CFR part 96), that could be used by states to develop their regulations. The $NO_X$ SIP Call rule explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

*D. What Is the $NO_X$ Budget and Allowance Trading Program?*

EPA's model $NO_X$ budget and allowance trading rule for SIPs, 40 CFR part 96, sets forth a $NO_X$ emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow its sources to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model $NO_X$ budget trading program. See 63 FR 57514–57538 and 40 CFR part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while achieving emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance permits the emission of a quantity of pollutant, *e.g.,* one ton of airborne $NO_X$.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the $NO_X$ SIP Call. The $NO_X$ SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the $NO_X$ SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On April 3rd and 18th, 2000, New York voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on *Michigan* v. *EPA*, affirming many aspects of the SIP Call and remanding certain other portions to the Agency. On June 22, 2000, the DC Circuit upheld EPA's $NO_X$ SIP Call. This allows EPA to move forward on a fixed schedule to reduce $NO_X$ emissions. The court's previous rulings did not affect this action because it was submitted and is being proposed as a SIP-strengthening measure regardless of the status of the case.

allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

*E. What Guidance Did EPA Use To Evaluate New York's Program?*

EPA evaluated New York's $NO_X$ SIP Call submittal using EPA's ''$NO_X$ SIP Call Checklist,'' (the checklist), issued on April 9, 1999. The checklist summarizes the requirements of the $NO_X$ SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist, developed from the basic requirements of the formal SIP Call **Federal Register** action (63 JR 57356), outlines the criteria that the EPA Regional Office used to determine the completeness and provability of New York's submittal.

As noted in the checklist, the key elements of an provable submittal under the $NO_X$ SIP Call are: a budget demonstration; enforceable control measures; legal authority to implement and enforce the control measures; adopted control measure compliance dates and schedules; monitoring, record keeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the $NO_X$ SIP Call. The checklist is available to the public on EPA's web site at: *http://www.epa.gov/ttn/otag/sip/related.html.*

As described above, the final $NO_X$ SIP Call rule included a model $NO_X$ budget trading regulation. See 40 CFR part 96. EPA used the model rule to evaluate New York's Part 204. Additionally, EPA used the October 1998 final $NO_X$ SIP Call rulemaking, as well as the subsequent technical amendments to the $NO_X$ SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), in evaluating the approvability of New York's submittal. EPA also used section 110 of the Act, ''Implementation Plans,'' to evaluate the approvability of New York's submittal as a revision to the SIP.

*F. What Is the Result of EPA's Evaluation of New York's Program?*

EPA has evaluated New York's $NO_X$ SIP Call submittal and proposes to find it approvable. The April 3, 2000 and April 18, 2000 submittals will strengthen New York's SIP for reducing ground level ozone by providing $NO_X$ reductions beginning in 2003. EPA proposes to find that the $NO_X$ control measure, Part 204, as well as the SIP narrative that includes New York's 2007 $NO_X$ baseline and controlled budgets, are approvable. EPA finds that the submittal contained the information necessary to demonstrate that New York has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

Although provisions in New York's control regulation, Part 204, differ slightly from EPA's $NO_X$ Budget Trading Model Rule, EPA finds that Part 204 is consistent with EPA's guidance and meets the requirements of the $NO_X$ SIP Call, including those found in 40 CFR part 51, § 51.121 and § 51.122 and 40 CFR part 96, as well as the general SIP submittal requirements of the Act, section 110, 42 U.S.C. 7401 *et seq.* The most notable differences between the EPA's model rule and New York's control regulation are related to the applicability of Part 204 to Portland cement kilns and smaller electricity generating sources than the model rule, and the use of a different method for allocating $NO_X$ allowances. These differences are acceptable since Part 204 conforms with the timing requirements for submitting the allocations to EPA.

While Part 204 contains provisions which differ slightly from the model rule, these deviations are limited to the acceptable deviations under § 51.121(p)(2). Therefore New York's Part 204 is approvable as satisfying the same portion of New York's $NO_X$ emission reduction obligations as the State projects the regulation will satisfy. See 63 FR 57495–57496.

EPA is proposing to approve New York's Part 204, and provides the following clarification with respect to exempted $NO_X$ Budget units. New York's Part 204–1.5 contains provisions dealing with the shutdown and/or change in physical characteristics of a $NO_X$ Budget unit and allows units which shutdown to re-enter the trading program as new sources or as opt-in sources if they change their physical characteristics such that they no longer are $NO_X$ Budget units. Therefore, New York should ensure that when the State computes future budget demonstrations, the emissions which account for shutdown and modified units are not combined with emissions from these new sources or with the emissions from uncontrolled source categories.

For example, allowing shutdown units to re-enter the Program without reducing the budget will decrease the tons of emissions reductions. The units' emissions would still be included in the trading program budget and allocated to other $NO_X$ Budget units, thereby requiring fewer tons of reduction from all other $NO_X$ Budget units. Similarly, New York's Part 204–1.4(b) provides for units which emit less than 25 tons of $NO_X$ per ozone season to be exempted from the trading program. However, New York does not reduce the trading program budget by the $NO_X$ emission limitation which again creates the potential for misinterpreting its emissions during a future budget determination. In this case, the unit's emissions could be counted in both the trading program budget and the uncontrolled source categories. In its budget demonstration, New York is responsible for accounting for the emissions reductions which it would have obtained from any shutdown or modified units.

Regarding New York's SIP narrative, EPA finds that the submittal contains the required elements, including: the baseline inventory of $NO_X$ mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory (budget demonstration) reflecting $NO_X$ reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial and 2007 state reporting requirements. EPA further finds that New York's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the $NO_X$ SIP Call.

For additional information regarding EPA's evaluation of New York's SIP Call submittal, the reader should refer to the document entitled, ''Technical Support Document for New York's $NO_X$ SIP Call Submittal,'' dated October 3, 2000. Copies of the technical support document can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

## II. New York's $NO_X$ Budget Program

*A. What Is New York's $NO_X$ Budget Demonstration?*

New York's April 18, 2000 SIP submittal, as supplemented on May 16, 2000, includes New York's SIP narrative entitled, ''New York State Implementation Plan For Ozone; Meeting The Statewide Oxides of Nitrogen ( $NO_X$) Budget Requirements Contained In The $NO_X$ SIP Call (63 FR 57356, October 27, 1998),'' that contains a statewide $NO_X$ emissions budget for the 2007 ozone season. Combined with

New York's new regulation, Part 204, ''$NO_X$ Budget Trading Program,'' the narrative demonstrates that the statewide $NO_X$ budget will be met in 2007.

The $NO_X$ SIP Call contained EPA calculations of baseline $NO_X$ emissions for the year 2007 for stationary point sources that are EGUs, stationary point sources that are non-EGUs, area sources, and mobile sources (both nonroad and highway). New York's SIP submittal incorporated EPA's 2007 baseline inventory.

To achieve the statewide budget, New York is relying on the expected $NO_X$ reductions from Part 204. Part 204 applies to all EGUs with nameplate electricity generating capacities equal to or greater than 15 megawatts that sell any amount of electricity, non-EGU units that have a maximum design heat input capacity equal to or greater than 250 mmBtu per hour, as well as Portland cement kilns with maximum design heat inputs equal to or greater than 250 mmBtu per hour.

Below is a table of the 2007 baseline, 2007 budget, and projected 2007 emission levels that New York has submitted with its $NO_X$ SIP Call submittals. The 2007 baseline and budget emissions in the following table are identical to the emission levels published by EPA in the March 2000 technical amendment. EPA has reviewed and agrees with New York's procedures for determining the 2007 projected emissions and reductions and therefore, EPA expects that New York's 2007 statewide budget will be achieved.

| Source category | EPA's 2007 baseline $NO_X$ emissions for NY (tons/season) | EPA's 2007 $NO_X$ budget emissions for NY (tons/season) | NY's 2007 projected emissions (tons/season) | NY's 2007 projected reductions (tons/season) |
|---|---|---|---|---|
| EGUs | 39,199 | 31,036 | [1] 30,589 | 8,610 |
| Non-EGU Point | 32,678 | 25,477 | [2] 25,185 | 7,493 |
| Area Sources | 17,423 | 17,423 | 17,423 | 0 |
| Non-Road Mobile | 42,091 | 42,091 | 42,091 | 0 |
| Highway Mobile | 124,261 | 124,261 | 124,261 | 0 |
| NY Total | 255,652 | 240,288 | 239,549 | 16,103 |

[1] 30,405 cap from trading program.
[2] 10,945 cap from trading program.

*B. What Is New York's $NO_X$ Budget Trading Program?*

In response to the $NO_X$ SIP Call, New York adopted Part 204, ''$NO_X$ Budget Trading Program.'' With Part 204, New York established a $NO_X$ cap and allowance trading program for the ozone seasons of 2003 and beyond. New York developed the regulation in order to reduce $NO_X$ emissions and allow its sources to participate in the kind of interstate $NO_X$ allowance trading program described in § 51.121(b)(2).

Under Part 204, New York allocates $NO_X$ allowances to its EGUs and large industrial units, including Portland cement kilns. Each $NO_X$ allowance permits a source to emit one ton of $NO_X$ during the seasonal control period. $NO_X$ allowances may be bought or sold. Unused allowances may also be banked for future use, with certain limitations. For each ton of $NO_X$ emitted in a control period, EPA will remove one allowance from the source's $NO_X$ Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their $NO_X$ emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budgeted source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other Federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

As described above, Part 204 differs from EPA's $NO_X$ model budget trading rule in two notable ways. Specifically, Part 204 includes Portland cement kilns and smaller electricity generating sources than the model rule. Also, Part 204 uses a different method for allocating $NO_X$ allowances. Refer to section I.F. of this document for more details.

*C. What Is the Compliance Supplement Pool?*

To provide additional flexibility for complying with emission control requirements associated with the $NO_X$ SIP Call, the final $NO_X$ SIP Call provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of $NO_X$ allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. The $NO_X$ SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply, or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing $NO_X$ reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.,* early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3).

Part 204 provides for the distribution of supplementary allowances by the early reduction credit methodology but not the direct distribution methodology. The distribution of early reduction credits are available to sources that implement $NO_X$ reductions beyond applicable requirements after September 30, 1999 but before May 1, 2003. Under Part 204, New York will only provide early reduction credits to those sources holding banked allowances that were

allocated in 2000, 2001, and 2002, under New York's Ozone Transport Commission's (OTC's) Memorandum of Understanding (MOU). Subpart 227–3 contains New York's SIP approved OTC's regional $NO_X$ cap and allowance trading program. See 65 FR 20905, April 19, 2000.

Part 204 specifies New York's compliance supplement pool to be 2,370 allowances whereas EPA's March 2000 technical amendment allows for 2,764 allowances. If New York wants to take advantage of this increased share of the pool, New York should amend Part 204 to 2,764 tons and submit it as a SIP revision for EPA approval. Also, should EPA subsequently revise New York's compliance supplement pool amount through rulemaking, New York should amend Part 204 and submit it as a SIP revision for EPA approval.

*D. How Does New York's Program Protect the Environment?*

New York's revised $NO_X$ SIP Call submittal is expected to result in about 6.3% reduction in $NO_X$ from New York's total 2007 baseline ozone season inventory and about 22.4% reduction in $NO_X$ from the EGUs and non-EGUs affected by Part 204. After reviewing air quality modeling assessments performed for the $NO_X$ SIP Call, EPA has determined that the $NO_X$ reductions in New York and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Besides ozone air quality benefits, decreases of $NO_X$ emissions will also help improve the environment in several other important ways. Decreases in $NO_X$ emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in $NO_X$ emissions reduce greenhouse gases and stratospheric ozone depletion.

*E. How Will New York and EPA Enforce the Program?*

Once approved into New York's SIP, both New York and EPA will be able to enforce the requirements of the $NO_X$ budget and allowance trading program in Part 204. All of the sources subject to the $NO_X$ allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emission allowances, emissions monitoring or pollution control equipment requirements. New York and EPA will be able to enforce the source specific requirements of those permits.

In order to determine compliance with the emission requirements of the program, at the end of each ozone season, New York and EPA will compare sources' allowance and actual emissions. The allowances are tracked using the $NO_X$ Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of $NO_X$ actually emitted by that source and recorded in the $NO_X$ Emissions Tracking System (NETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

*F. When Did New York Propose and Adopt the Program?*

New York published public notices on June 30, 1999 and February 16, 2000 to announce the availability of the proposed Part 204 and the SIP narrative, that included the statewide 2007 $NO_X$ emission budget, respectively. The public notices opened 30-day public comment periods. New York held public hearings on the proposed regulation on August 2 and 3, 1999 and on the SIP narrative on March 20 and 21, 2000. After modifying the proposal in response to public comment, New York filed the final Part 204 on January 26, 2000 with the Department of State. The regulation became effective at the State level on February 25, 2000.

*G. When Did New York Submit the SIP Revision to EPA and What Did It Include?*

New York submitted Part 204 and the SIP narrative to EPA, on April 3, 2000 and April 18, 2000 respectively, with a request to revise the New York SIP. On July 11, 2000, EPA sent a letter to New York finding the SIP submittals technically and administratively complete.

New York's SIP submittals include the following:

- Adopted control measures which require emission reductions beginning in 2003; Part 204, ''$NO_X$ Budget Trading Program'';
- A baseline inventory of $NO_X$ mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007, as part of New York's SIP narrative;
- A 2007 projected inventory (budget demonstration) reflecting $NO_X$ reductions achieved by the state control measures contained in the submittal, as part of New York's SIP narrative;
- A description of how the State intends to use the compliance supplement pool, as part of New York's SIP narrative and in Part 204;
- A commitment to meet the annual, triennial, and 2007 reporting requirements, as part of the SIP narrative.

*H. What Other Significant Items Relate to New York's Program?*

In addition to submitting the April 2000 SIP package in order to fulfill its $NO_X$ SIP Call obligation, New York adopted Part 204 as part of its one-hour ozone attainment plans for the ozone nonattainment areas of the State. The attainment plans rely on the $NO_X$ reductions associated with Part 204 in 2003 and beyond. EPA proposed approval of New York's attainment plans for ozone nonattainment areas on December 16, 1999. See 64 FR 70364. Approval and implementation of Part 204 is relied on in order for New York to attain the one-hour ozone standard.

Part 204 is also related to the Ozone Transport Commission's (OTC's) ozone season $NO_X$ budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including New York, to the development and proposal of a region-wide reduction in $NO_X$ emissions. The OTC agreement committed the states to one phase of reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, New York adopted its $NO_X$ budget and allowance trading regulation, Subpart 227–3, on January 12, 1999. Subpart 227–3 contained a $NO_X$ emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as ''OTC Phase II.'' EPA approved New York's Phase II OTC $NO_X$ budget regulation on April 19, 2000. See 65 FR 20905. Although the OTC MOU obligations are not Federal requirements, Part 204 can be viewed as satisfying the ''OTC Phase III'' program requirements for the ozone seasons beginning in 2003 and beyond.

*I. Impact of D.C. Circuit Court Remand on New York's $NO_X$ SIP Call Submittal*

On March 3, 2000, the D.C. Circuit ruled on *Michigan* v. *EPA,* affirming many aspects of the $NO_X$ SIP call and remanding certain other portions to the Agency (*e.g.,* the definition of an EGU and the control assumptions for internal combustion engines). Because of the litigation, the States' deadline for submitting their SIP revisions was extended, and as a result, by order dated August 30, 2000, the Court also extended the deadline for implementation of the required SIP revisions from May 1, 2003 to May 31,

2004. Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the $NO_X$ SIP Call, including New York. The Agency expects to publish those recalculated budgets in the next few months. However, this means that although EPA is proposing to approve New York's SIP submittal as meeting the air quality objectives of the $NO_X$ SIP Call published to date, New York may be required to make minor adjustments to its $NO_X$ SIP Call program due to potential forthcoming changes to the $NO_X$ SIP Call requirements. At such time as EPA publishes new emission budget requirements, EPA will inform New York and other states subject to the $NO_X$ SIP Call as to what if any changes are needed.

*J. What Is the Relationship of Today's Proposal to EPA's Findings Under the Section 126 Rule?*

In the January 18, 2000 section 126 rule (65 FR 2674), EPA granted, in part, petitions submitted by Connecticut, Massachusetts, New York, and Pennsylvania under the 1-hour ozone standard. The EPA made findings that large EGUs and large non-EGUs located in the District of Columbia and 12 states, including a portion of New York, are significantly contributing to nonattainment problems in one or more of the petitioning states. The January 18, 2000 rule established Federal emissions limits for the affected sources in the form of tradable $NO_X$ allowances and required these sources to reduce $NO_X$ emissions by May 1, 2003.

The section 126 rule provides that if a state submits, and EPA fully approves, a SIP revision meeting the requirements of the $NO_X$ SIP call, the section 126 findings and associated control requirements would automatically be revoked for sources in that state. See 40 CFR 52.34(i). As discussed in the preamble to the section 126 rule (65 FR 2682–2684), the premise for the automatic withdrawal provision was that once a SIP (or Federal Implementation Plan (FIP)) controls the full amount of significant contribution from a state, the section 126 sources in that state could no longer be significantly contributing to downwind nonattainment, and hence the basis for the section 126 findings would no longer be present. Moreover, the provision would ensure that the downwind states receive the emission reduction benefits they are entitled to under section 126 by May 1, 2003, either under the section 126 rule or under a federally enforceable SIP or FIP. See 65 FR 2684. Thus, EPA's rationale for adopting the automatic withdrawal provision depended upon a May 1, 2003 compliance date for sources under the SIP that would substitute for the control remedy under section 126. Accordingly, EPA interpreted section 52.34(i) to apply only where EPA approves a SIP revision (or promulgates a FIP) meeting the full requirements of the $NO_X$ SIP call and including a May 1, 2003 compliance date for sources.[3] See 65 FR 2683.

As discussed in section II.I. of this proposal, the EPA is currently revising certain portions of the $NO_X$ SIP call in response to a March 3, 2000 decision by the U.S. Court of Appeals for the D.C. Circuit. *See Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). In this decision, the court upheld the $NO_X$ SIP call on all major issues, but remanded four narrow issues to EPA for further rulemaking. EPA expects to issue soon a proposal to address the remanded issues, which will slightly modify the $NO_X$ SIP budgets based on the court's decision. In light of the changes necessary to respond to the court decision, EPA anticipates that the final $NO_X$ SIP budgets would be no more stringent than the original SIP budgets as modified by the March 2, 2000 technical amendment which modified the $NO_X$ emission budgets for each affected state. See 65 FR 11222. Therefore, a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant $NO_X$ transport from that state, and therefore section 52.34(i) would apply to automatically withdraw the section 126 requirements for sources in that state.

In today's action, EPA is proposing to approve the New York $NO_X$ SIP revision as meeting the full $NO_X$ SIP Call, and including a May 1, 2003 compliance date. Therefore, if the SIP revision is fully approved as proposed, the section 126 requirements will automatically be withdrawn for sources in the State pursuant to 40 CFR 52.34(i).

## III. Proposed Action

EPA has reviewed New York's April 3, 2000 and April 18, 2000 SIP submittals, including New York's May 16, 2000 supplement, using the $NO_X$ SIP Call rulemaking notices and checklist. EPA has reviewed New York's control measures and projected reductions and finds them approvable. Therefore, EPA proposes approval of Part 204 and the SIP narrative into the New York SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. EPA will consider these comments before it takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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, 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

[3] On August 30, 2000, in response to a motion from industry, the Court extended the $NO_X$ SIP call compliance deadline for sources until May 31, 2004. The court's decision does not affect any state that chooses to submit a SIP revision which includes an earlier compliance deadline.

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. Thus, the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by § 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 27, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00–30912 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[Docket Id–00–01; FRL–6912–4]**

## Finding of Attainment for PM–10; Portneuf Valley PM–10 Nonattainment Area, Idaho

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rule.

**SUMMARY:** EPA is proposing to find that the Portneuf Valley nonattainment area in Idaho has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM–10) as of December 31, 1996.

**DATES:** Written comments must be received on or before December 26, 2000.

**ADDRESSES:** Written comments should be mailed to Debra Suzuki, SIP Manager, Office of Air Quality, Mailcode OAQ–107, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address.

**FOR FURTHER INFORMATION CONTACT:** Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–0782.

**SUPPLEMENTARY INFORMATION:** Throughout this notice, the words ''we'', ''us'', or ''our'' means the Environmental Protection Agency (EPA).

**Table of Comments**

I. Background
- A. Designation and Classification of PM–10 Nonattainment Areas.
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- C. What is the Attainment Date for the Portneuf Valley PM–10 Nonattainment Area?
- D. What PM–10 Planning has Occurred for the Portneuf Valley PM–10 Nonattainment Area?

II. EPA's Proposed Action
- A. What Does the Air Quality Data Show As of the December 31, 1996 Attainment Date?
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- C. Request for Public Comment.

III. Administrative Requirements

### I. Background

*A. Designation and Classification of PM–10 Nonattainment Areas*

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA) were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. See generally 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987), as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM–10 prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Power-Bannock Counties PM–10 nonattainment area was one of these initial moderate PM–10 nonattainment areas. As discussed below, the Portneuf Valley PM–10 nonattainment area was originally part of the Power-Bannock Counties PM–10 nonattainment area.

All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM–10 NAAQS by the December 31, 1994 attainment date was practicable. See section 189(a).

*B. How Does EPA Make Attainment Determinations*

All PM–10 nonattainment areas are initially classified ''moderate'' by operation of law when they are designated nonattainment. See section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM–10 nonattainment areas attained the PM–10 NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment areas and entered into the EPA Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A &B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual

arithmetic mean PM–10 concentration over a three year period (for example 1994, 1995, and 1996 for areas with a December 31, 1996 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM–10. See 40 CFR part 50 and appendix K.

*C. What is the Attainment Date for the Portneuf Valley PM–10 Nonattainment Area*

As stated above, the Power-Bannock Counties PM–10 nonattainment area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990. The area covered approximately 266 square miles in south central Idaho and included State lands in portions of Power and Bannock Counties, as well as both trust and fee lands within the Fort Hall Indian Reservation. The cities of Pocatello and Chubbuck were located near the center of this nonattainment area on State lands. Approximately 15 miles northwest of downtown Pocatello is an area known as the ''industrial complex,'' where two major stationary sources of PM–10 are located, which was also in the Power-Bannock Counties PM–10 nonattainment area. The boundary between the Fort Hall Indian Reservation and State lands runs through the industrial complex, with the Astaris-Idaho, LLC facility (formerly owned and operated by FMC Corporation) located on the Fort Hall Indian Reservation and the J.R. Simplot Corporation facility located on State lands immediately adjacent to the Reservation. For an extensive discussion of the history of the designation of the Power-Bannock Counties PM–10 nonattainment area, please refer to the discussion at 61 FR 29667, 29668–29670 (June 12, 1996).

The original attainment date for the Power-Bannock Counties PM–10 nonattainment area was December 31, 1994. The attainment date was later extended to December 31, 1995, and then to December 31, 1996, under the authority of section 188(d) of the Act. See 61 FR 20730 (May 8, 1996) (first one-year extension); 61 FR 66602 (December 18, 1996) (second one-year extension). Effective December 7, 1998, the Power-Bannock Counties PM–10 nonattainment area was split into two nonattainment areas at the boundary between the Fort Hall Indian Reservation and State lands: the Fort Hall PM–10 nonattainment area and the Portneuf Valley PM–10 nonattainment area. For a more detailed discussion of the rationale behind EPA's decision to split the Power-Bannock County PM–10 nonattainment area into two separate PM–10 nonattainment areas, please refer to the discussion at 63 FR 33597 (June 19, 1998)(proposed action) and 63 FR 59722 (November 5, 1998)(final action). The attainment date for both nonattainment areas continues to be December 31, 1996.

*D. What PM–10 Planning has Occurred for the Portneuf Valley PM–10 Nonattainment Area*

After the Power-Bannock Counties PM–10 nonattainment area was designated nonattainment for PM–10, the Idaho Division of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and EPA began to work together in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products, IDEQ, along with several local agencies, developed and implemented control measures on PM–10 sources in what is now known as the Portneuf Valley PM–10 nonattainment area. The State submitted these control measures to EPA in 1993 as a moderate PM–10 nonattainment state implementation plan (SIP) revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program, controls on fugitive road dust, and a revised operating permit for the J.R. Simplot facility, the only major stationary source of PM–10 in the Portneuf Valley PM–10 nonattainment area. EPA has not yet taken final action to approve the State's moderate PM–10 SIP for the area and additional air quality planning efforts may be needed because of recent air quality data. EPA will take action on IDEQ's SIP revision for the Portneuf Valley PM–10 nonattainment area in a separate rulemaking. For a discussion of the PM–10 planning for the Fort Hall PM–10 Nonattainment Area, please refer to 64 FR 7308 (February 12, 1999); 65 FR 51412 (August 23, 2000).

**II. EPA's Proposed Action**

*A. What Does the Air Quality Data Show As of the December 31, 1996 Attainment Date?*

Whether an area has attained the PM–10 NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR 50, appendix K. For an area with a December 31, 1996, attainment date, data reported for calendar years 1994, 1995 and 1996 is considered.

The State of Idaho has established and operated four PM–10 SLAMS monitoring sites in the Portneuf Valley PM–10 nonattainment area during 1994 through 1996. The State began monitoring for PM–10 in 1986 at the Sewage Treatment Plant (STP) monitoring site, located approximately one mile to the northeast of the industrial complex. A site at Idaho State University (ISU), located near downtown Pocatello, began operation in 1988 and continued operation until June 1999. The Chubbuck School monitoring site (CS), located approximately four miles northeast of the industrial complex, began operation in 1989 and continued operation until July 1999. In 1990, a fourth PM–10 monitoring site was established at the intersection of Garrett and Gould (G&G), located approximately halfway between the industrial complex and downtown Pocatello. All four monitoring sites meet EPA SLAMS network design and siting requirements, set forth at 40 CFR part 58, appendices D and E, and continue to monitor for PM–10.

There have been no violations of the annual PM–10 standard at any of the State monitors since 1990. A violation of the 24-hour PM–10 NAAQS was recorded at the ISU and G&G monitoring sites on January 7, 1993. As a result of the one-in-every six day sampling frequency at each of these sites at that time, the expected exceedance rate for the 1993 calendar year at the SLAMS sites was 6.0. No measured values above the level of the 24-hour NAAQS were recorded, however, in the remainder of 1993, 1994, 1995, or 1996. Therefore, the three year average (1994, 1995, 1996) expected exceedance rate at the SLAMS sites as of the attainment date of December 31, 1996 is 0.0. This data was discussed in detail in the June 19, 1998, **Federal Register** notice which proposed to split the Power-Bannock Counties PM–10 nonattainment area at the State-Reservation boundary. See 63 FR 33597. In the public comments received on that proposal, no one disputed the validity of that data and EPA has received no additional air

quality data since that time for the period from 1994 to 1996 showing an exceedence of PM–10 standards. Therefore, EPA proposes to find that the Portneuf Valley PM–10 nonattainment area attained the PM–10 standard by extended attainment date of December 31, 1996.

*B. Does the More Recent Air Quality Data Also Show Attainment?*

Although the attainment date for the Portneuf Valley PM–10 nonattainment area is December 31, 1996, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1994, 1995, and 1996, EPA has also reviewed the air quality data collected at the State monitoring sites from 1997 through the second quarter of 2000. During 1997, the highest measured PM–10 concentration was recorded at the STP site at a level of 149 ug/m3, just below the level of the 24-hour standard. All other measurements in the Portneuf Valley PM–10 nonattainment area during 1997 were less than 100 ug/m3. During 1998, the highest measured PM–10 concentration recorded on any of the State monitors was at the CS site, at a level of 118 ug/m3. The second highest measured PM–10 concentration was at the ISU site, at a level of 108 ug/m3. All other measurements in the area were less than 100 ug/m3 during 1998.

During the end of December 1999 and the beginning of January 2000, there was a significant air pollution episode in the Portneuf Valley and Fort Hall PM–10 nonattainment areas during which elevated levels of PM–10 were recorded on the State monitors as well as on the Tribal monitors. In addition, both the State of Idaho and the Shoshone-Bannock Tribes received a significant number of air quality complaints during this time. During this several day episode, three levels above the level of the 24-hour PM–10 NAAQS were reported on the State monitors, all of which occurred at the G&G site: 183 ug/m3 on December 27, 1999, 168 ug/m3 on December 29, 1999, and 159 ug/m3 on December 31, 1999. The next highest concentration at the G&G site during 1999 was 146 ug/m3 on December 26, 1999, which is below the level of the 24-hour PM–10 standard. The G&G site samples every day between October 1st and March 30th. The other three State monitoring sites did not report levels above 150 ug/m3, the level of the 24-hour PM–10 standard. The next highest level reported at any of the other of the State monitoring sites during 1999 was 124 ug/m3 recorded at the STP site on December 26, 1999. The highest reported concentration during 1999 at the ISU site was 74 ug/m3 on January 25, 1999, and at the CS site was 39 ug/m3 on January 30, 1999. During the first two quarters of 2000, the highest 24-hour PM–10 concentration was recorded at the G&G site, at 112 ug/m3 on February 6, 2000.

Although the three days with concentrations above the level of the 24-hour PM–10 NAAQS reported at the G&G site at the end of 1999 are of concern to EPA, these data do not represent a violation of the 24-hour PM–10 standard because there were no days with levels above the 24-hour PM–10 standard during 1997 and 1998. Three exceedences in three years results in an expected exceedance rate of 1.0 for the three-year period from 1997 to 1999, just below the rate that would represent a violation of the 24-hour PM–10 standard. Should any measured level above the 24-hour PM–10 standard be recorded at G&G site during the years 2000 or 2001, however, then a violation of the 24-hour PM–10 standard would exist in the Portneuf Valley PM–10 nonattainment area. EPA is continuing to closely follow the air quality data reported by the State of Idaho for the Portneuf Valley PM–10 nonattainment area.

In summary, there were no PM–10 concentrations above the level of the 24-hour standard at any of the four different SLAMS monitoring sites in the Portneuf Valley PM–10 nonattainment area in 1994, 1995, and 1996, which indicates that the Portneuf Valley area attained the 24-hour PM10 NAAQS as of December 31, 1996. Review of the annual standard for calendar years 1994, 1995 and 1996 reveals that the Portneuf Valley area also attained the annual PM–10 NAAQS as of December 31, 1996. The area has continued to attain the 24-hour and annual PM–10 standards since that time. Therefore, EPA proposes to find that the Portneuf Valley PM–10 nonattainment area attained the PM–10 NAAQS as of December 31, 1996. If we finalize this proposal, consistent with CAA section 188, the area will remain a moderate PM–10 nonattainment area and will avoid the additional planning requirements that apply to serious PM–10 nonattainment areas.

This proposed finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because Idaho has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Portneuf Valley PM–10 nonattainment area until such time as Idaho meets the CAA requirements for redesignations to attainment.

*C. Request for Public Comment*

We are soliciting public comments on EPA's proposal to find that the Portneuf Valley PM–10 nonattainment area has attained the PM–10 NAAQS as of the December 31, 1996 attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

**III. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely makes a determination based on air quality date and does not impose any requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed 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 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality date and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied

with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00–31053 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2676, MM Docket No. 00–241, RM–9968]**

### Digital Television Broadcast Service; Hastings, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the Nebraska Educational Telecommunications Commission, licensee of noncommercial educational Station KHNE(TV), NTSC Channel *29, Hastings, Nebraska, requesting the substitution of DTV Channel *28 for station KHNE(TV)'s assigned DTV Channel *14. DTV Channel *14 can be allotted to Hastings, Nebraska, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40–46–20 N. and 98–05–21 W.). As requested, we propose to allot DTV Channel *28 to Hastings with a power of 200 and a height above average terrain (HAAT) of 366 meters.

**DATES:** Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for Nebraska Educational Telecommunications Commission).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–241, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—TELEVISION BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Nebraska is amended by removing DTV Channel *14 and adding DTV Channel *28 at Hastings.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–30974 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2677, MM Docket No. 00–242, RM–9998]**

### Digital Television Broadcast Service; Weston, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Withers Broadcasting Company of West Virginia, licensee of station WDTV–TV, NTSC channel 5, Weston, West Virginia, requesting the substitution of DTV channel 6 for station WDTV–TV's assigned DTV channel 58. DTV Channel 6 can be allotted to Weston, West Virginia, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (39–04–29 N. and 80–25–28 W.). As requested, we propose to allot DTV Channel 6 to Weston with a power of 10 and a height above average terrain (HAAT) of 253 meters.

**DATES:** Comments must be filed on or before January 22, 2001, and reply comments on or before February 6, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Lee G. Petro, Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for Withers Broadcasting Company of West Virginia).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–242, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete

text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—TELEVISION BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia is amended by removing DTV Channel 58 and adding DTV Channel 6 at Weston.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–30973 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 00–2691, MM Docket No. 00–243, RM–9981]**

## Digital Television Broadcast Service; Orono, ME

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Maine Public Broadcasting Corporation, licensee of noncommercial educational station WMEB–TV, NTSC channel 12, Orono, Maine, proposing the substitution of DTV channel *9 for station WMEB–TV's assigned DTV channel *22. DTV Channel *9 can be allotted to Orono, Maine, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44–42–13 N. and 69–04–47 W.). However, since the community of Orono is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel *9 to Orono with a power of 15.0 and a height above average terrain (HAAT) of 375 meters.

**DATES:** Comments must be filed on or before January 25, 2001, and reply comments on or before February 9, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, 1200 New Hampshire, NW., Suite 800, Washington, DC 20036 (Counsel for Maine Public Broadcasting Corporation).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–243, adopted December 1, 2000, and released December 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—TELEVISION BROADCAST SERVICES

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

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

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Maine is amended by removing DTV Channel *22 and adding DTV Channel *9 at Orono.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–30971 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AG28**

## Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Zayante Band-winged Grasshopper

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of draft economic analysis.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft economic analysis for the proposed designation of critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*). We are opening a 15-day comment period to allow all interested parties to submit written comments on the draft economic analysis. Comments submitted during this comment period will be incorporated into the public record and will be fully considered in the final rule.

**DATES:** The comment period is opened and we will accept comments until

December 21, 2000. Comments must be received by 5 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Copies of the draft economic analysis are available on the Internet at ''www.r1.fws.gov'' or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to ''fw1grasshopper@r1.fws.gov.'' Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AG27'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805–644–1766; facsimile 805–644–3958).

**SUPPLEMENTARY INFORMATION:**

## Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The grasshopper is in the Order Orthoptera and Family Acrididae.

The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (0.54 to 0.68 inches); females are larger, ranging in length from 19.7 to 21.6 millimeters (0.78 to 0.85 inches) (Otte 1984; Rentz and Weissman 1984).

The Zayante band-winged grasshopper occurs in association with the Zayante series soils in the vicinity of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley in Santa Cruz County, California. These soils harbor a complex mosaic of vegetation dominated by maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964; Holland 1986). The distributions of these two vegetative communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and silver-leafed manzanita mixed chaparral. These communities are collectively referred to as ''Zayante sand hills'' and harbor a diversity of rare and endemic plant and animal species, including the Zayante band-winged grasshopper (Thomas 1961; Griffin 1964; Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone dominated ridges and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

Within the Zayante sandhills, the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief. In addition, Zayante band-winged grasshoppers have been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a,b).

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Over 40 percent of Zayante sand hills, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities, including sand mining, urban development, recreational activities and agriculture (R. Morgan, private consultant, pers. comm. 1992; Marangio and Morgan 1987; Lee 1994). Approximately 200 to 240 hectares (ha) (500 to 600 acres(ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (R. Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional lower quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in vegetative communities and loss of habitat for the Zayante band-winged grasshopper. For example, lack of fire is resulting in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Lack of sunlight as a result of shading by Ponderosa pines appears to be restricting use of areas by the Zayante band-winged grasshopper and resulting in low population numbers (C. Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in these areas resulting in the loss of Ponderosa pines and the creation of areas with increased exposure to sunlight. Non-native species of vegetation, including Portuguese broom (*Cystisus striatus*) and sea fig (*Carpobrotus chilensis*) are out-competing native vegetation and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threat to the Zayante band-winged grasshopper.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on January 24, 1997 (62 FR 3616). On July 7, 2000, we published in the **Federal Register** (65 FR 41919) a determination proposing critical habitat for the Zayante band-winged grasshopper. Approximately 4,230 hectares (10,560 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Zayante band-winged grasshopper and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We will accept written comments during this reopened comment period. The current comment period on this proposal closes on December 21, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

## Author

The primary author of this notice is Colleen Sculley, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 29, 2000.

**Dennis D. Peters,**

*Acting Manager, California/Nevada Operations Office.*

[FR Doc. 00–31007 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register

Vol. 65, No. 235

Wednesday, December 6, 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

### Food Safety and Inspection Service

**[Docket No. 00–047N]**

### FSIS: The Next Steps

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) will hold a public meeting on December 13, 2000, to discuss the Agency's plans to continue to improve the quality and effectiveness of its programs and to work with establishments in the meat and poultry industry to improve their performance under the Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) regulations. FSIS believes that, since the HACCP-based regulatory approach has now been implemented in meat and poultry establishments of all sizes, it is time to plan for these improvements. At the meeting, FSIS will provide information and receive comments from the public on several major areas in which improvements can and should be made. FSIS will carefully consider the input from all interested parties at this meeting in formulating a multi-year strategy for such program improvements.

**DATES:** The meeting will be held from 9:00 a.m. to 3:00 p.m. on December 13, 2000. Written comments must be received on or before January 5, 2001.

**ADDRESSES:** The meeting will be held at the Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037; telephone (202) 429–2400. Submit written comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. Interested persons are requested to submit an original and two copies of comments concerning this subject. Comments should be sent to the Docket Clerk at the address shown above and should refer to Docket No. 00–047N. Copies of all comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** To obtain general information about the meeting arrangements, contact Ms. Sally Fernandez at (202) 690–6524 or fax at (202) 690–6519. For more technical program information, contact Loren Lange, Special Assistant to the Deputy Administrator, Office of Policy, Program Development, and Evaluation, FSIS, at (202) 690–4039 or fax (202) 205–0058.

**SUPPLEMENTARY INFORMATION:** The regulatory requirements mandated by the Pathogen Reduction/HACCP final rule (61 FR 33806 *et seq.*) have now been implemented by meat and poultry establishments of all sizes. Although some of the establishments have excellent HACCP programs, it is clear that other establishments have less effective programs, and that some owners and managers may not fully understand their responsibilities under the Sanitation Standard Operating Procedures regulations (9 CFR 416.11–416.17) and HACCP program requirements (9 CFR 417).

It is also clear that FSIS activities can be improved. Many more FSIS personnel need training, more experience, and better feedback in HACCP concepts and in the application of FSIS HACCP regulations. FSIS personnel also need additional guidance material that they can use to better assist small and very small establishments. In addition, FSIS must complete regulatory actions that fill in gaps in the HACCP framework and the farm-to-table food safety continuum. FSIS needs to establish the necessary infrastructure to fulfill its responsibilities as a 21st century public health regulatory agency.

The public meeting is being held to discuss the Agency's current thinking on, and public reaction to, themes that will guide the Agency's strategies and activities for making system improvements. At the public meeting, presentations will be made on HACCP experience and accomplishments to date and the Agency's thinking about the concepts that are likely to guide its future actions. After the presentations, there will be opportunity for further discussion and comment by interested parties.

### Additional Public Notification

FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. FSIS anticipates that this notice will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, notices are designed to provide information and receive public comment on issues that may lead to new or revised Agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, allied health professionals, scientific professionals, and other persons who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done in Washington, DC, on November 30, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–31069 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspapers will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

**SUPPLEMENTARY INFORMATION:** The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

**Regional Forester, Intermountain Region**

For decisions made by the Regional Forester affecting National Forest in Idaho:
*The Idaho Statesman,* Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada:
*The Reno Gazette-Journal,* Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming:
*Casper Star-Tribune,* Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah:
*Salt Lake Tribute,* Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
*Salt Lake Tribune,* Salt Lake City, Utah

*Ashley National Forest*

Ashley Forest Supervisors decisions:
*Vernal Express,* Vernal, Utah
Vernal District Ranger decisions:
*Vernal Express,* Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming:
*Casper Star Tribune,* Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah:
*Vernal Express,* Vernal, Utah
Roosevelt and Duchesne District Ranger decisions:
*Uintah Basin Standard,* Roosevelt, Utah

*Boise National Forest*

Boise Forest Supervisor decisions:
*The Idaho Statesman,* Boise, Idaho
Mountain Home District Ranger decisions:
*The Idaho Statesman,* Boise, Idaho
Idaho City District Ranger decisions:
*The Idaho Statesman,* Boise, Idaho
Cascade District Ranger decision:
*The Long Valley Advocate,* Cascade, Idaho
Lowman District Ranger decisions:
*The Idaho World,* Garden Valley, Idaho
Emmett District Ranger decisions:
*The Messenger-Index,* Emmett, Idaho

*Bridger-Teton National Forest*

Bridger-Teton Forest Supervisor decision:
*Casper Star-Tribune,* Casper, Wyoming
Jackson District Ranger decision:
*Casper Star-Tribune,* Casper, Wyoming
Buffalo District Ranger decisions:
*Casper Star-Tribune,* Casper, Wyoming
Big Piney District Ranger decisions:
*Casper Star-Tribune,* Casper, Wyoming
Pinedale District Ranger decisions:
*Casper Star-Tribune,* Casper, Wyoming
Greys River District Ranger decisions:
*Casper Star-Tribune,* Casper, Wyoming
Kemmerer District Ranger decisions:
*Casper Star-Tribune,* Casper, Wyoming

*Caribou-Targhee National Forest*

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
*Idaho State Journal,* Pocatello, Idaho
Soda Springs District Ranger decisions:
*Idaho State Journal,* Pocatello, Idaho
Montpeler District Ranger decisions:
*Idaho State Journal,* Pocatello, Idaho
Westside District Ranger decisions:
*Idaho State Journal,* Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion:
*The Post Register,* Idaho Falls, Idaho
Dubois District Ranger decisions:
*The Post Register,* Idaho Falls, Idaho
Island Park District Ranger decisions:
*The Post Register,* Idaho Falls, Idaho
Ashton District Range decisions:
*The Post Register,* Idaho Falls, Idaho
Palisades District Ranger decisions:
*The Post Register,* Idaho Falls, Idaho
Teton Basin District Ranger decisions:
*The Post Register,* Idaho Falls, Idaho

*Dixie National Forest*

Dixie Forest Supervisor decisions:
*The Daily Specturm,* St. George, Utah
Pine Valley District Ranger decisions:
*The Daily Spectrum,* St. George, Utah
Cedar City District Ranger decisions:
*The Daily Spectrum,* St. George, Utah
Powell District Ranger decisions:
*The Daily Spectrum,* St. George, Utah
Escalante District Ranger decisions:
*The Daily Spectrum,* St. George, Utah
Teasdale District Ranger decisions:
*The Daily Spectrum,* St. George, Utah

*Fishlake National Forest*

Fishlake Forest Supervisor decisions:
*Richfield Reaper,* Richfield, Utah
Loa District Ranger decisions:
*Richfield Reaper,* Richfield, Utah
Richfield District Ranger decisions:
*Richfield Reaper,* Richfield, Utah
Beaver District Ranger decisions:
*Richfield Reaper,* Beaver, Utah
Fillmore District Ranger decisions:
*Richfield Reaper,* Fillmore, Utah

*Humboldt—Toiyabe National Forests*

Humboldt—Toiyabe Forest Supervisor decisions for the Humboldt portion:

*Elko Daily Free Press,* Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
*Reno Gazette-Journal,* Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
*Reno Gazette-Journal,* Reno, Nevada
Bridgeport District Ranger, decisions:
*The Review-Herald,* Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountains National Recreation Area District Ranger decisions:
*Las Vegas Review Journal,* Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
*Reno Gazette-Journal,* Reno, Nevada
Tonopah District Ranger decisions:
*Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada
Ely District Ranger decisions:
*Ely Daily Times,* Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
*Elko Daily Free Press,* Elko, Nevada
Ruby Mountains District Ranger decisions:
*Elko Daily Free Press,* Elko, Nevada
Jarbidge District Ranger decisions:
*Elko Daily Free Press,* Elko, Nevada
Santa Rosa District Ranger decisions:
*Humboldt Sun,* Winnemucca, Nevada

*Manti-Lasal National Forest*

Manti-LaSal Forest Supervisor decisions:
*Sun Advocate,* Price, Utah
Sanpete District Ranger decisions:
*The Pyramid,* Mt. Pleasant, Utah
Ferron District Ranger decisions:
*Emery County Progress,* Castle Dale, Utah
Price District Ranger decisions:
*Sun Advocate,* Price, Utah
Moab District Ranger decisions:
*The Times Independent,* Moab, Utah
Monticello District Ranger decisions:
*The San Juan Record,* Monticello, Utah

*Payette National Forest*

Payette Forest Supervisor decisions:
*Idaho Statesman,* Boise, Idaho
Weiser District Ranger decisions:
*Signal American,* Weiser, Idaho
Council District Ranger decisions:
*Council Record,* Council, Idaho.
New Meadows, McCall, and Krassel District Ranger decisions:
*Star News,* McCall, Idaho

*Salmon-Challis National Forests*

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
*The Recorder-Herald,* Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion:
*The Challis Messenger,* Challis, Idaho
North Fork District Ranger decisions:
*The Recorder-Herald,* Salmon, Idaho
Leadore District Ranger decisions:
*The Recorder-Herald,* Salmon, Idaho
Salmon/Colbalt District Ranger decisions:
*The Recorder-Herald,* Salmon, Idaho
Middle Fork District Ranger decisions:
*The Challis Messenger,* Challis, Idaho
Challis District Ranger decisions:
*The Challis Messenger,* Challis, Idaho
Yankee Fork District Ranger decisions:
*The Challis Messenger,* Challis, Idaho
Lost River District Ranger decisions:
*The Challis Messenger,* Challis, Idaho

*Sawtooth National Forest*

Sawtooth Forest Supervisor decisions:
*The Times News,* Twin Falls, Idaho
Burley District Ranger decisions:
*Ogden Standard Examiner,* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
*South Idaho Press,* Burley, Idaho, for decisions issued on the Idaho portion of the Burley District.
Twin Falls District Ranger decisions:
*The Times News,* Twin Falls, Idaho
Ketchum District Ranger decisions:
*Idaho Mountain Express,* Ketchum, Idaho
Sawtooth National Recreation Area:
*Challis Messenger,* Challis, Idaho
Fairfield District Ranger decisions:
*The Times News,* Twin Falls, Idaho

*Uinta National Forest*

Uinta Forest Supervisor decisions:
*The Daily Herald,* Provo, Utah
Pleasant Grove District Ranger decisions:
*The Daily Herald,* Provo, Utah
Heber District Ranger decisions:
*The Daily Herald,* Provo, Utah, and
Spanish Fork District Ranger decisions:
*The Daily Herald,* Provo, Utah

*Wasatch-Cache National Forest*

Wasatch-Cache Forest Supervisor decisions:
*Salt Lake Tribune,* Salt Lake City, Utah
Salt Lake District Ranger decisions:
*Salt Lake Tribune,* Salt Lake City, Utah
Kamas District Ranger decisions:
*Salt Lake Tribune,* Salt Lake City, Utah
Evanston District Ranger decisions:
*Uintah County Herald,* Evanston, Wyoming
Mountain View District Ranger decisions:
*Uintah County Herald,* Evanston, Wyoming
Ogden District Ranger decisions:
*Ogden Standard Examiner,* Ogden, Utah
Logan District Ranger decisions:
*Logan Herald Journal,* Logan, Utah

Dated: November 30, 2000.

**Jack A. Blackwell,**

*Regional Forester.*

[FR Doc. 00–30999 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–11–M

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## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Maximum Dollar Amount on Loan and Grant Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2001

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2001. The maximum dollar award on zero-interest loans for FY 2001 is $450,000. The maximum dollar award on grants for FY 2001 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2000, and ending September 30, 2001. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

**FOR FURTHER INFORMATION CONTACT:** Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6870, 1400 Independence Avenue, SW, Washington, DC 20250. Telephone: (202) 720–9558. FAX: (202) 720–6561. E-mail: PWing@rus.usda.gov.

**SUPPLEMENTARY INFORMATION:** The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2001 for zero-interest loans is $15 million and the projected program level for grants is $3 million. Applying the specified 3.0 percent to the program level for loans results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than

$200,000. Therefore, the maximum grant award for FY 2001 will be $200,000.

Dated: November 21, 2000.

**Wilbur T. Peer,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. 00–30966 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–XY–U

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2001 Survey of Program Dynamics.

*Form Number(s):* SPD–21005, SPD–21006, SPD–21007, SPD–21008, SPD–21009, SPD–21103(L), SPD–21105(L), SPD–21107(L), SPD–21109(L), SPD–21113(L), SPD–21999.

*Agency Approval Number:* 0607–0838.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 37,023 hours.

*Number of Respondents:* 75,225.

*Avg Hours Per Response:* 29.5 minutes.

*Needs and Uses:* The Census Bureau seeks OMB approval to conduct the 2001 Survey of Program Dynamics (SPD). The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the spring of 1997 with a bridge survey that provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. Annual surveys are currently planned through 2002. The data gathered for the 10-year period (1992–2002) will aid in assessing short- to medium-term consequences of outcomes of the welfare legislation.

The 2001 SPD instrument will remain largely unchanged from 2000. A new response category will be added to an existing question regarding types of health insurance coverage. Also, a paper Adolescent Self-Administered Questionnaire (SAQ) for 12- to 17-year-olds will be added. The Adolescent SAQ was last asked in the 1998 SPD. The 2001 SPD is conducted by our interviewing staff using a computer-assisted interviewing instrument on laptops during personal and telephone interviews.

In order to improve the validity of the SPD data we supplemented the 2000 SPD sample with 3,500 former SIPP households who were non-interviews in the 1997 SPD. Contingent on Congressional funding, we plan to continue interviewing these 3,500 households and add an additional 6,000 former SIPP households to the 2001 SPD sample. As in previous years, we will offer monetary incentives to select groups of respondents in order to maintain and improve response rates.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 42 U.S.C., Section 614.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 30, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–30962 Filed 12–05–00; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 5, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Tomassoni, Bureau of the Census, WP–1, Room 204, Washington, DC 20233. Phone Number 301–457–8253.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

**Note:** The present clearance expires May 31, 2001. This request covers field activities to be conducted from June 1, 2001 through May 31, 2004.

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. (The MAF is the Census Bureau's address database and TIGER is the geographic database.) We now propose to extend that generic clearance to cover update activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe all planned activities for the entire period; we will not submit a clearance package for each updating activity. We will send a letter to OMB at least five days before the planned start of each activity that

gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start. The Census Bureau used the MAF for mailing and delivering questionnaires to households during Census 2000. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF we built for Census 2000 is meant to be kept current, thereby, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of each activity we plan to conduct under the clearance for the next three fiscal years.

*1. Community Address Updating System (CAUS)*

The CAUS program will consist of both tests and actual production work over the next few years. The 2000 CAUS Field Test was conducted in twenty-four counties throughout the country. The test began in Fiscal Year (FY) 2000 and will continue into FY 2001. The tests objectives are to obtain address information about new housing units and add those to the MAF, and to correct and update the existing addresses in the MAF. In FY 2000, we produced data sets and assignments which we loaded onto laptop computers. The data sets are used in the Automated Listing and Mapping Instrument (ALMI) to allow the Field Representatives (FRs) to collect updates which can then be applied to the Master Address File (MAF) and TIGER.

In addition to the above, a smaller ''Splash'' test will be conducted sometime during the first half of 2001. This field test will be similar to the 2000 field test, but on a smaller scale. The estimated number of households involved will be 2,500. The estimated time per response is 2 minutes. The estimated respondent burden hours is 85 hours.

In FY 2002, there will be a CAUS Field Test Dress Rehearsal. The operation will be similar to the 2000 CAUS Field Test, but there will be more of a production component to the CAUS Dress Rehearsal. The estimated number of households involved will be 125,000. The estimated time per response is 2 minutes. The estimated respondent burden hours is 4,165 hours.

Planned for FY 2003 is the actual CAUS operation. The operation will take place nationwide. The estimated number of households involved will be 200,000. The estimated time per response is 2 minutes. The estimated respondent burden hours is 6,660 hours.

The CAUS will help the Census Bureau maintain a current MAF and TIGER throughout the decade and into the next decennial census.

*2. Evaluation of the Quality of Geocodes*

The Census Bureau is conducting the Accuracy and Coverage Evaluation (A.C.E.) to measure the overall and differential coverage of the U.S. population and housing in Census 2000. An independent listing (IL) of all the housing units in the A.C.E. sample clusters was conducted before census day. This IL was then matched to the Decennial Master Address File (DMAF) to measure housing unit coverage. In some cases, the results found in A.C.E. will reflect geocoding error in the census. The objective of the Evaluation of the Quality of the Geocodes Associated with Census Addresses is to measure the quality of the geocodes in Census 2000, beyond the measure provided by the A.C.E.

The final housing unit matching results from the A.C.E. sample are used as the starting point for this evaluation. For cases that didn't match during the final housing unit matching, the search will be extended from the block cluster level on the DMAF to a wider search area on the MAF. Potential matches from this search indicate possible geocoding error or cases that were excluded from Census 2000. In some cases, field follow-up will be done to confirm the matches.

There are approximately 310,000 housing units in the A.C.E. Approximately 10,600 of those 310,000 are expected to not match to the DMAF. These 10,600 cases will then be computer matched to the full MAF looking at the ring of 1990 census tracts surrounding the 1990 tract to which the address is assigned in the MAF.

Roughly 4,000 of the 10,600 housing units are expected to computer match to the MAF at the surrounding tract level and 6,600 are not. These 6,600 cases will be sent to the National Processing Center for clerical matching. About 2,000 of the 6,600 are estimated to clerically match to the MAF at the surrounding tract level. That gives an estimated 6,000 cases that will match to the MAF at the surrounding tract level. These 6,000 cases will be sent to the field for follow-up. For cases that match to units on the MAF within the ring of tracts, Field Division will be asked to confirm the existence of the unit and the MAF block. All of the remaining A.C.E. nonmatches will be assumed to be census misses.

It is anticipated that the field work will involve contacting respondents about residential status only if it is not already obvious. In addition, field staff may need to contact residents regarding specific information about the location of their unit to help determine what block they're in. The most burdensome case scenario would be all 6,000 units being contacted. The estimated time per response is 1 minute. The estimated total respondent burden is 100 hours. All of the field work is expected to take place in FY 2002.

*3. Evaluation of the Block Splitting Operation for Tabulation Purposes*

Collection blocks are blocks defined by visible features. Sometimes these blocks cross governmental or other required data tabulation boundaries. Collection blocks are used to conduct field operations. At the end of Census 2000, blocks need to be defined by governmental and other boundaries for data tabulation purposes. To achieve this, collection blocks need to be split in certain situations. The resulting blocks are called tabulation blocks.

The objective of this evaluation is to measure the quality of the processes that are used to provide the address range and map spot information to split blocks for tabulation purposes.

Approximately 600,000 blocks will be split for tabulation purposes. For this evaluation, a sample of collection blocks that have at least one block split caused by tabulation geography will be field visited. The purpose of the field visit is to determine if the splitting of the block was accurate relative to the actual feature or governmental unit boundary that caused the block split in the first place. The types of tabulation geography that are inscope for this evaluation are visible boundaries, non-visible governmental boundaries, and American Indian Reservation boundaries. The sample of blocks will be split blocks that have at least one housing unit or group quarters. Areas that were enumerated in the Remote Alaska operation will not be in sample. Puerto Rico will be in sample however,

the sample size may not be large enough to produce estimates specifically for Puerto Rico.

All sampled split collection blocks will be sent to the field with maps and listings of addresses in the 2000 Census. Field will determine actual tabulation geography for every housing unit in the collection block.

A sample size has not been determined yet. The most burdensome case scenario would be approximately 10,000 units being contacted. This is based on the assumptions that:

- 2,000 blocks will be selected,
- Each block has 30 housing units,
- Most of the field work will be done by observation, and
- 5 housing units per block will need to be contacted to confirm their location relative to the governmental boundary.

The estimated time per response is 1 minute. The estimated total respondent burden is 167 hours. All of the field work will occur in FY 2001.

In addition to the above evaluations, there may be other evaluations that may be conducted in the next three years to help the Census Bureau evaluate the quality of work done during Census 2000. Any other evaluations would be similar to those above and would be within the scope of the clearance as a MAF/TIGER updating activity.

## II. Method of Collection

The primary method of data collection for all operations will be personal interview by Census Listers or Enumerators using the operation's listing form. In some cases, the interview could be by telephone callback if no one was home on the initial visit. See part I for details of each operation.

## III. Data

*OMB Number:* 0607–0809.

*Form Number:* The form numbers for some activities have not yet been assigned. See the descriptions of the activities in part I for form numbers where applicable.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* Varies by operation, see chart below.

*Estimated Time Per Response:* Varies by operation, see chart below.

*Estimated Total Annual Burden Hours:* FY01 377; FY02 10,500; FY03 16,700.

*Estimated Total Annual Cost:* The only cost to respondents is that of their time to respond.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, United States Code, Sections 141 and 193.

| Activity | FY 2001 respondents | FY 2002 respondents | FY 2003 respondents | Average hours per response | Responses per respondent | FY 2001 burden hours | FY 2002 burden hours | FY 2003 burden hours |
|---|---|---|---|---|---|---|---|---|
| CAUS (Splash Test) | 2,500 | 0 | 0 | .033 | 1 | 85 | 0 | 0 |
| CAUS (Dress Rehearsal) | 0 | 125,000 | 0 | .033 | 1 | 0 | 4,165 | 0 |
| CAUS Operation | 0 | 0 | 200,000 | .033 | 1 | 0 | 0 | 6,660 |
| Evaluations (Quality of Geocodes) | 0 | 6,000 | 0 | .016 | 1 | 0 | 100 | 0 |
| Evaluations (Block Splitting) | 10,000 | 0 | 0 | .016 | 1 | 167 | 0 | 0 |
| Totals | 12,500 | 131,000 | 200,000 | ..... | ..... | 252 | 4,265 | 6,660 |

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–30961 Filed 12–5–00; 8:45 am]

**BILLING CODE 3510–07–P**

# DEPARTMENT OF COMMERCE

## Census Bureau

## Evaluation of Responses to the Question on Race

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 5, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christine Hough, Bureau of the Census, Building 2, Rm: 1801–MOD B, Washington, DC 20233–9200, 301–457–4248.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

On October 30, 1997, the Office of Management and Budget (OMB) issued revised standards by which all federal agencies, beginning with Census 2000, are to collect, tabulate, and present data on race and ethnicity. Included in these standards was the identification of five racial categories—White, Black or African American, American Indian or Alaskan Native, Asian, and Native Hawaiian or Other Pacific Islander. For the 1990 census, sixteen specific racial response categories that collapsed into the 1977 four racial categories were used—White, Black or African American, American Indian or Alaskan Native, and Asian or Pacific Islander. The standards also included changes in the terminology used for each group and the sequencing of the questions on race and Hispanic origin. In the 1990 census, the question on race preceded the question on Hispanic origin with two intervening questions. For Census 2000, the question on Hispanic origin is

immediately before the question on race with a note to respondents to answer both questions. The most profound change to the standards was that of allowing respondents to report more than one race if they chose to do so. Some of the impetus for the OMB change to allow the reporting of one or more races came from the increasing number of interracial marriages and births to parents of different races in the past 25 to 35 years. For many census data users, both governmental and non-governmental as well as the private sector, there is a need to understand how the Census 2000 race distributions relate to race distributions from previous censuses and current surveys where respondents were instructed to report only one race.

Data by race from most federal surveys currently reflect a collection methodology of asking respondents to mark only one race category. Users of the Census 2000 data on race will need to compare the race distribution from Census 2000 to these other sources. The objective of the study is to produce data that will improve users' ability to make comparisons between Census 2000 data on race that allowed the reporting of one or more races, and data on race from other sources that allow single race reporting. The primary goal is to improve comparisons of 1990 and Census 2000 race distributions, at national and lower geographic levels. Other goals are to facilitate comparisons between Census 2000 and Census Bureau surveys which instruct respondents to mark one race, and with data from the vital records system which uses census data to calculate such indicators as birth and death rates.

## II. Method of Collection

The methodology for the evaluation requires that the sample households be contacted twice to provide information on race. The sample households are mailed an initial questionnaire which they are scheduled to receive around July 1, 2001. Approximately one month later, the sample households are re-contacted by telephone to collect additional race and other information. The evaluation requires the administration of both the 1990 question on race and the Census 2000 question on race in a split panel design. A total sample of about 50,000 addresses will be selected containing respondents who reported more than one race, as well as addresses where respondents reported a single race in Census 2000.

For the initial data collection, one panel of about 25,000 housing units will be enumerated using a questionnaire similar to the Census 2000 short form with the 1990 census instruction to the question on race, that is, to ''mark one race.'' The other panel of about 25,000 housing units will be enumerated using the identical questionnaire, except the instruction to the question on race will include the wording ''mark one or more races.'' Census 2000 data collection methods will be used including the mailout/mailback procedure along with personal interviewing for those addresses that do not respond via mail. We are assuming a 50 percent initial mail response rate. Therefore, nonresponse follow-up procedures similar to those used for Census 2000 will be implemented. Results from each of the panels will be matched to their Census 2000 results. The match variables will include the name, age, date of birth, and sex of the sample housing unit members. Every effort will be made to capture data for people who moved into the sample address and ascertain the previous address at which they were enumerated in Census 2000. However, no efforts will be made to trace movers; that is, we will not ask information about people who have moved out of the sample addresses since April 1, 2000.

A reverse questionnaire design procedure will be used to re-contact housing units that participated in the initial data collection. Sample housing units that participated in the intial data collection with the mark one or more races instruction will be re-contacted by telephone and asked to report one race. Those housing units that received the mark one race instruction will be asked to mark one or more races. For housing units for which there is no telephone, personal interviews will be conducted to collect the re-contact information. The questions on both the re-contact instruments will be similar; only minor modifications will be made to probe for additional information in instances where respondents are reluctant to report a single race when asked to do so. During the re-contact, every effort will be made to speak with the individual who completed the initial questionnaire. To facilitate this effort, data from the initial questionnaires will be transcribed onto the re-contact instruments. During the re-contact interview, respondents will be asked to provide additional relevant information, including the race of biological parents, and other pertinent social, demographic, and economic data.

The goal is to produce reliable estimates that replicate, to the extent possible, the Census 2000 race distributions in terms of the percent reporting a single race, more than one race, and the distribution of the responses among a pre-determined number of possible race combinations. It is likely that less than 20 combinations will be identified.

## III. Data

*OMB Number:* Not available.

*Form Number(s):* S–698A, S–698B.

*Type of Review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25,000.

*Estimated Total Annual Cost:* There is no cost to respondents except for their time to respond.

*Respondents Obligation:* Mandatory.

*Legal Authority:* Title 13 of the United States Code, Sections 141 and 193.

## IV. Request for Comments

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–30960 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1129]**

## Expansion of Foreign-Trade Zone 3, San Francisco, California

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 San Francisco Port Commission, grantee of Foreign-Trade Zone 3, submitted an application to the Board for authority to expand FTZ 3 to include the jet fuel storage and distribution system at the San Francisco International Airport and related facilities (261 acres) in the San Francisco, California, area, within the San Francisco Customs port of entry (FTZ Docket 16–2000; filed April 28, 2000);

*Whereas,* notice inviting public comment was given in the **Federal Register** (65 FR 30057, May 10, 2000) 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 3 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

**Troy H. Cribb,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 00–31111 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1128]**

### Expansion of Foreign-Trade Zone 79, Tampa, Florida

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 City of Tampa, Florida, grantee of Foreign-Trade Zone 79 (Tampa, Florida), submitted an application to the Board for authority to expand FTZ 79 to include the jet fuel storage and distribution system at the Tampa International Airport (Site 7—100 acres) in Tampa, Florida, within the Tampa Customs port of entry (FTZ Docket 12–2000; filed March 28, 2000);

*Whereas,* notice inviting public comment was given in the **Federal Register** (65 FR 18282, April 7, 2000) 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 79 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

**Troy H. Cribb,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 00–31109 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 64–2000]**

### Foreign-Trade Zone 133–Rock Island, Illinois; Application For Foreign-Trade Subzone Status, Deere & Company (Construction Equipment), Davenport, Iowa

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Quad-City Foreign-Trade Zone, Inc., grantee of FTZ 133, requesting special-purpose subzone status for the manufacturing facility (construction equipment) of Deere & Company (Deere), located in Davenport, Iowa. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 2000.

The Deere facility is located at the intersection of Highway 61 and Mt. Joy Road in Davenport, Iowa. This facility (2.2 million square feet; 900 employees) is used for the development and manufacture of construction equipment (heavy-duty four-wheel-drive loaders, motor graders, and heavy-duty wheeled log skidders). Deere uses some foreign-sourced components in the manufactures of these products. However, most of those items enter the U.S. duty-free. The only foreign-sourced items for which Deere is seeking to gain FTZ benefits are transmissions, controllers, and shifters, all of which are only used in the production of four-wheel drive loaders (these components represent approximately 24.3% of the production cost of the loaders). Duty rates on these imported components range from 2.5% to 2.7%.

Zone procedures would exempt Deere from Customs duty payments on foreign components used in export production. On its domestic sales, Deere would be able to choose the lower duty rate that applies to the finished products (duty-free) for the foreign components noted above. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 5, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 20, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW., Washington, DC. 20230. Quad-City Foreign-Trade Zone, Inc., 1830 Second Avenue, Suite 200, Rock Island, Illinois 61201.

Dated: November 27,2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–31106 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1121]**

### Grant of Authority; Establishment of a Foreign-Trade Zone; Decatur, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and

for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board of Park Commissioners, Decatur Park District (the Grantee), has made application to the Board (FTZ Docket 36–99, filed July 14, 1999), requesting the establishment of a foreign-trade zone in Decatur, Illinois, adjacent to the Peoria Customs port of entry;

*Whereas,* notice inviting public comment has been given in the **Federal Register** (64 FR 39483, July 22, 1999); and

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 245, at the site described in the application and serving the area described in the application record, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

Foreign-Trade Zones Board.

**Norman Y. Mineta,**

*Secretary of Commerce, Chairman and Executive Officer.*

[FR Doc. 00–31107 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1127]**

## Expansion of Foreign-Trade Zone 22 Chicago, Illinois

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 Illinois International Port District, grantee of Foreign-Trade Zone No. 22, submitted an application to the Board for authority to expand FTZ 22-Site 3 in the Chicago, Illinois area, within the Chicago Customs port of entry (FTZ Docket 1–2000, filed 1/4/00);

*Whereas*, notice inviting public comment was given in the **Federal Register** (65 FR 2375, January 1, 2000) 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 22–Site 3 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2000.

**Troy H. Cribb,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 00–31108 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 52–2000]**

## Foreign-Trade Zone 44—Mount Olive, New Jersey, Area Application for Expansion; Extension of Public Comment Period

The comment period for the above case, submitted by the New Jersey Commerce and Economic Growth Commission, requesting authority to expand its zone to include a site in Cranbury Township (65 FR 52984, August 31, 2000), is extended to December 29, 2000, to allow interested parties additional time in which to comment on the proposal. The period for rebuttal comments is extended to January 31, 2001.

Submissions should include three (3) copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 30, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–31110 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1131]**

## Expansion of Foreign-Trade Zone 86 Tacoma, Washington, Area

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 Port of Tacoma (Washington), grantee of Foreign-Trade Zone 86, submitted an application to the Board for authority to expand FTZ 86 to include additional FTZ space at Sites 1, 2 and 3, and to include four new sites in the Tacoma, Washington, area, adjacent to the Tacoma Customs port of entry (FTZ Docket 4–2000; filed February 17, 2000);

*Whereas,* notice inviting public comment was given in the **Federal Register** (65 FR 11549, March 3, 2000) 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 the 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 86 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of November 2000.

**Troy H. Cribb,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 00–31112 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–580–809]**

## Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results and Rescission in Part of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and partial rescission of antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The period of review is November 1, 1998 through October 31, 1999. This review covers imports of subject merchandise from three producers/exporters.

We have preliminarily determined that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the United States Customs Service to assess antidumping duties based on the difference between the U.S. price and normal value.

We have also determined that the reviews of Dongbu and Union should be rescinded.

We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder or John Brinkmann, AD/CVD Enforcement, Office 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 and 482–4126, respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

## Background

On November 16, 1999, the Department published in the **Federal Register** a *Notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* for the period November 1, 1998 through October 31, 1999 (64 FR 62167).

In accordance with 19 CFR 351.213(b)(2), the following producers and/or exporters of circular welded non-alloy steel pipe (standard pipe) from the Republic of Korea requested an administrative review of their sales on November 30, 1999: SeAH Steel Corporation (SeAH) and Hyundai Pipe Company, Ltd. (Hyundai). Also on November 30, 1999, Allied Tube and Conduit Corporation, Sawhill Tubular Division-Armco, Inc., and Wheatland Tube Company (collectively, the petitioners) requested reviews of Dongbu Steel Company, Ltd. (Dongbu), Hyundai, Korea Iron and Steel Company, Ltd. (KISCO), Shinho Steel Company, Ltd. (Shinho) and Union Steel Manufacturing Company, Ltd. (Union). On December 28, 1999, we published the notice of initiation of this antidumping duty administrative review for Dongbu, Hyundai, KISCO, SeAH, Shinho, and Union (collectively, the respondents). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 72644 (*Initiation Notice*).

On January 13, 2000, we issued questionnaires to the respondents. Because the Department disregarded sales that failed the cost test during the most recently completed segment of the proceeding in which each company participated, pursuant to section 773(b)(2)(A)(ii) of the Act, we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of normal value (NV) in this review were made at prices below the cost of production (COP). Therefore, we initiated cost investigations of the respondents at the time we initiated the antidumping review.

Union made a submission on January 18, 2000, certifying that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the period of review (POR). In its submission, Union elaborated that in 1997 it had sold its manufacturing facilities and relinquished its business licenses with respect to the subject merchandise, citing material it had submitted in the 1997/98 review of this order. As part of a July 6, 2000 submission, Union placed on the record of this proceeding information from the 1997/98 review.

On February 1, 2000, Dongbu also submitted a certification that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the POR. However, a review of Customs Service entries during the POR revealed a number of entries listing Dongbu as the manufacturer. In response, Dongbu made a submission on June 30, 2000, showing that an erroneous manufacturer identification code was used for those entries by the importer of record.

On February 15, 2000, Hyundai requested that it be excused from reporting resales of subject merchandise that were produced by unaffiliated manufacturers and not further manufactured by Hyundai. The petitioners commented on Hyundai's request on February 16, 2000. On February 22, 2000, we issued a memorandum instructing respondents to report only those resales of merchandise that were further processed. *See* the Memorandum to the File, ''Extension of Due Dates for Questionnaire Responses, Reporting of Cost Data on Fiscal-year Basis, Reporting of Resales'' (*Reporting Memorandum*).

On February 11, 2000, Hyundai requested that it be allowed to report its cost data on a fiscal-year basis. On February 15, 2000, similar requests were received from KISCO, SeAH, and Shinho. On February 16, 2000, the petitioners commented on the respondents' requests for fiscal-year reporting of costs. On February 22, 2000, we requested that the respondents demonstrate that the use of fiscal-year cost reporting would not be distortive. Between February 28 and March 10, 2000, we received information and comments from the petitioners and the respondents on the difference between fiscal-year and POR-based cost reporting.

After requesting extensions for the submission of their responses to the questionnaire and receiving the same, Hyundai, KISCO, SeAH and Shinho submitted their section A through D responses by March 24, 2000. The petitioners submitted comments on the questionnaire responses in April 2000. We issued supplemental questionnaires covering sections A through D to the respondents by June 14, 2000, and received responses by July 5, 2000.

The petitioners withdrew their request for review with respect to KISCO on June 15, 2000. On July 11, 2000, the Department rescinded the review with respect to KISCO and extended the time limit for the preliminary results to October 6, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review,* 65 FR 44521 (July 18, 2000).

On September 14, 2000, the petitioners submitted comments to the Department addressing several issues in

anticipation of these preliminary results.

On October 2, 2000, we extended the time limits for the preliminary results by an additional twenty-eight days, or until no later than November 3, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review,* 65 FR 59823 (October 6, 2000). On October 31, 2000, we fully extended the time limits for the preliminary results until no later than November 29, 2000. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review,* 65 FR 66523 (November 6, 2000).

**Rescission of Review in Part**

As stated above in the ''*Case History*'' section of this notice, Dongbu certified that it did not make sales or exports of subject merchandise to the United States during the POR. To confirm the same, we reviewed Customs Service data which revealed a number of entries listing Dongbu as the manufacturer. In response, Dongbu submitted documentation on June 30, 2000, showing that these entries contained the wrong manufacturer designation. On September 15, 2000, Dongbu informed the Department that the Customs Service data did not need to be corrected because although the wrong manufacturer designation was listed, the correct dumping deposit rate was paid on all the sales listed on the Customs documentation for the period. We confirmed the information provided by Dongbu. *See* Memorandum to the File, ''Confirmation of Customs Data Concerning Dongbu,'' dated November 29, 2000. Furthermore, we find that Union placed sufficient evidence on the record of this review demonstrating that it did not make exports to or sales in the United States of subject merchandise manufactured or produced by itself during the period of review. Accordingly, we are rescinding this review with respect to Dongbu and Union.

**Scope of Review**

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and Customs Service purposes, our written description of the scope of this proceeding is dispositive.

**Product Comparisons**

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States with identical merchandise sold in Korea. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar foreign like product.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing (variable COM) between each U.S. model and the most similar home market model selected for comparison.

**Comparisons to Normal Value**

To determine whether sales of standard pipe from Korea were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''*Export Price and Constructed Export Price*'' and ''*Normal Value*'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

**Export Price and Constructed Export Price**

For sales to the United States, we used, as appropriate, EP or CEP in accordance with sections 772(a) and 772(b) of the Act. We calculated EP where the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. We calculated CEP for sales made by affiliated U.S. resellers that took place after importation into the United States.

We based EP and CEP on the packed C&F, CIF duty paid, FOB, or ex-dock duty paid prices to the first unaffiliated purchaser in, or for exportation to, the United States. Where appropriate, we made deductions for discounts and rebates, including early payment discounts. We added to U.S. price amounts for duty drawback, pursuant to section 772(c)(1)(B) of the Act, to the extent that such rebates were not excessive. See *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea,* 62 FR 55574 (October 27, 1997) (*Pipe First Review*). We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including: foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. wharfage, U.S. customs brokerage, and U.S. customs duties (including harbor maintenance and merchandise processing fees).

For CEP, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including commissions, credit costs, warranty expenses, and indirect selling expenses, where applicable. We made adjustments for interest revenue

collected on late payments, where applicable. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Consistent with the preceding review, we determined that although for home market transactions the invoice date reasonably approximates the date on which material terms of sale are made, invoice date should not be used as the date of sale for U.S. transactions. While each company has a slightly different U.S. sales process, consistent throughout the responses is the notion that price and quantity are established, then the factory produces the subject merchandise, and finally, after a significant period of time, the product is shipped and an invoice issued. Based on this understanding of the respondents' U.S. sales process, we have used as date of sale the purchase order date, which reasonably approximates the time at which the material terms of sale are set.

Pursuant to sections 772(a) and 772(b) of the Act, we reclassified Hyundai's reported EP sales as CEP sales since the agreement for sale occurred in the United States between Hyundai Pipe America and Hyundai Corporation USA, Hyundai's U.S. affiliates, and the unaffiliated customers. *See* Memorandum to Susan Kuhbach, ''Classification of Sales by Hyundai Pipe Co., Ltd as EP or CEP,'' dated November 27, 2000.

**Normal Value**

*A. Selection of Comparison Markets*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

Hyundai and SeAH reported sales in the home market of ''overrun'' merchandise (*i.e.,* sales of a greater quantity of pipe than the customer ordered due to overproduction). Hyundai and SeAH claimed that we should disregard ''overrun'' sales in the home market as outside the ordinary course of trade.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in the usual commercial quantities and in the ordinary course of trade. Ordinary course of trade is defined in section 771(15) of the Act. We analyzed the following criteria to determine whether ''overrun'' sales differ from other sales of commercial pipe: (1) Ratio of overrun sales to total home market sales; (2) number of overrun customers compared to total number of home market customers; (3) average price of an overrun sale compared to average price of a commercial sale; (4) profitability of overrun sales compared to profitability of commercial sales; and (5) average quantity of an overrun sale compared to the average quantity of a commercial sale. Based on our analysis of these criteria and on an analysis of the terms of sale, we found certain overrun sales to be outside the ordinary course of trade. This analysis is consistent with our treatment of such sales in prior reviews. *See* Memoranda from Team to the File, ''Preliminary Results Calculation Memorandum for Hyundai Pipe Co., Ltd.. ('HDP')'' and ''Preliminary Results Calculation Memorandum for SeAH Steel Corporation ('SeAH'),'' dated November 29, 2000.

*B. Arm's Length Test*

Hyundai and SeAH had sales in the home market to affiliated customers. Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan,* 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule (Antidumping Duties)*, 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403.

*C. Cost of Production Analysis*

Because we disregarded sales below the COP in the last completed review for Hyundai, SeAH, and Shinho (*see Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 32833, June 16, 1998 (*Pipe Fourth Review*)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review for all respondents may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a sales-below-cost investigation of these companies' home market sales.

We conducted the COP analysis described below.

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and packing, in accordance with section 773(b)(3) of the Act.

We allowed respondents to report their costs on a fiscal-year basis because their fiscal years were closely aligned with the POR (November–October POR vs. January–December fiscal year), the differences in costs were minimal, and there was no other indication that the use of fiscal-year data would be distortive. *See Reporting Memorandum.*

We relied on the respondents' information as submitted, except in the specific instances discussed below.

2. Test of Comparison Market Prices

As required under section 773(b) of the Act, we compared the weighted-average COP to the per unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product

were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the 12-month period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such below-cost sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that Hyundai, SeAH, and Shinho all made home market sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*D. Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on ex-works, FOB, or delivered prices to comparison market customers. We made deductions from the starting price for inland freight and warehousing. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (COS) adjustments for direct expenses, including imputed credit expenses and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable COM for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, where applicable, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

During the POR, SeAH purchased the foreign like product from unaffiliated manufacturers and then further manufactured it into products also within the scope of this review. For purposes of these preliminary results, we have included sales of all such further-manufactured subject merchandise in our analysis.

*E. Level of Trade (LOT)*

As set forth in section 773(a)(1)(B) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the EP or CEP. When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market.

We determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731* (November 19, 1997); *see also* 19 CFR 351.412 (62 FR 27296, 27414–27415 (May 19, 1997)) for a concise description of this practice. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we consider the selling functions reflected in the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[1] We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

When CEP sales have been made in the United States, section 773(a)(7)(B) of the Act establishes that a CEP offset may be granted provided that two conditions exist: (1) NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not permit a determination that there is a pattern of consistent price differences between sales at different LOTs in the comparison market.

In implementing these principles in this review, we obtained information from each respondent regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, *see* the November 29, 2000, ''Antidumping Administrative Review of *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea:* Preliminary Level of Trade Analysis''' memorandum, on file in the Central Records Unit (CRU). The company-specific LOT analysis is included in the business proprietary analysis memorandum for each company.

**Currency Conversion**

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine that the following percentage weighted-average margins exist for the period November 1, 1998, through October 31, 1999:

[1] The U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOT for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.,* v. *United States,* 4 F. Supp.2d 1221, 1241–42 (CIT March 26, 1998) (*Borden II*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgment in *Borden II* on the LOT issue. *See Borden, Inc.,* v. *United States,* Court No. 96–08–01970, Slip Op. 99–50 (CIT, June 4, 1999). The government has appealed *Borden II* to the Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a LOT analysis, as articulated in the Department's regulations at section 351.412.

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Hyundai | 3.77 |
| Shinho | 1.38 |
| SeAH | 0.98 |

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue a notice of the final results of this administrative review, including the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

**Assessment Rate**

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

**Cash Deposit Requirements**

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of standard pipe from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 4.80 percent, the ''all others'' rate established in the less-than-fair-value investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 29, 2000.

**Troy H. Cribb,**

*Assistant Secretary, for Import Administration.*

[FR Doc. 00–31105 Filed 12–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense will submit to OMB for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Personnel Security Investigation Projection for Industry Survey; OMB Number 0704– [To Be Determined].

*Type of Request:* New Collection; Emergency processing requested with a shortened public comment period ending December 11, 2000. An approval date by December 15, 2000, has been requested.

*Number of Respondents:* 242.

*Responses Per Respondents:* 1.

*Annual Responses:* 242.

*Average Burden Per Response:* 75 minutes.

*Annual Burden Hours:* 303.

*Needs and Uses:* Under the National Industrial Security Program (NISP), the Defense Security Service (DSS) is responsible for personnel security clearance investigations within industry. The Defense Security Service has used historical data for agency budget projections.

This collection of information is necessary to request the voluntary assistance of a segment of the cleared industry facilities to provide projections of numbers and types of personnel security investigations. This initial effort will serve as the prototype for an annual data collection from industry. This information collection will only address the largest cleared facilities that account for a significant number of the security clearances. The data would become part of the total clearance projections for industry to be included in an automated database for use with DSS budget submissions.

*Affected Public:* Business or Other For-Profit.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, or by fax at (703) 604–6270.

Dated: November 30, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–31016 Filed 12–5–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Visitors to the U.S. Naval Academy

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

**DATES:** The meeting will be held on Monday, December 11, 2000, from 8:30 a.m. to 11:45 a.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

**ADDRESSES:** The meeting will be held in the Bo Coppedge Dining Room of Alumni Hall at the U.S. Naval Academy.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone number: (410) 293–1503.

**SUPPLEMENTARY INFORMATION:** This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: November 29, 2000.

**James L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–31000 Filed 12–5–00; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–136–000]**

### Madison Gas & Electric Company, Wisconsin Public Service Corporation, American Transmission Company, LLC; Notice of Filing

November 30, 2000.

Take notice that on November 29, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing a request for clarification of the Commission's November 24, 2000, order authorizing, *inter alia*, the disposition of WPSC's transmission facilities to American Transmission Company LLC (ATC LLC). The requested clarification relates to whether the Commission's order encompassed the issuance of the membership units in ATC LLC that are related to the WPSC transmission facilities, to a wholly-owned WPSC subsidiary (WPS LLC). If the requested clarification cannot be granted, then WPSC alternatively requests Commission authorization under section 203 of the FPA to effectuate the aspects of the transfer involving WPS LLC.

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 December 11, 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31020 Filed 12–5–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–33–000]**

### Northern Natural Gas Company; Notice of Application

November 30, 2000.

Take notice that on November 20, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed with the Commission in Docket No. CP01–33–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), to abandon and remove certain pipeline facilities and appurtenant equipment in Dodge and Saunders Counties, Nebraska, all as more fully set forth in the application which is open to the public for inspection.

Northern proposes to abandon and remove approximately 2,200 feet of its 16-inch diameter A-Line at its Platte River bridge crossing. Northern states that the abandonment project begins in northeastern Saunders County and ends in southwestern Dodge County. Northern also states that approximately half of the A-Line to be abandoned lies in Saunders County and the other half lies in Dodge County. The A-Line runs down the face of a 107-foot bluff on the south side of the river crossing. Several

naturally caused landslides have occurred on the face of this bluff. Although the A-Line has not suffered any physical damage, Northern cannot predict the timing, location, and magnitude of a future landslide. Consistent with Northern's goal to provide safe and reliable natural gas service, Northern states that it has decided to remove the A-Line river crossing. Northern further states that it will be able to provide the capacity required to meet current firm obligations through existing facilities. Thus, the proposed abandonment of facilities would not result in the abandonment of service to any of Northern's existing customers. Northern estimates it would spend $410,000 to remove the 2,200 feet of 16-inch diameter pipe on the A-Line and the appurtenant bridge structure.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Any questions regarding the application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, phone number (402) 398–7421, or Don Vignaroli, Senior Regulatory Analyst at (402) 398–7139.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Comments will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30983 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP01–35–000]**

## Southern Natural Gas Company; Notice of Application

November 30, 2000.

Take notice that on November 21, 2000, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP01–35–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain pipeline looping facilities on its South Georgia Facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us./online/rims.htm* (call (202) 208–2222 for assistance).

Southern states that on August 1, 2000, South Georgia Natural Gas Company (South Georgia), which had been a wholly owned subsidiary of Southern, was merged into Southern. Southern states that the former South Georgia facilities are now owned and operated by Southern as part of its system and known as the South Georgia Facilities. Southern further states that customers benefiting from the South Georgia Facilities continue to pay rates applicable only to the South Georgia Facilities pursuant to the May 31, 2000, Order on Uncontested Settlement and Granting Certificate Authorization in Docket No. RP99–496–000, *et al.*

Southern states that South Georgia conducted an open season that expired on July 14, 2000, to determine whether any shippers were interested in acquiring long-term Rate Schedule FT service on the South Georgia Facilities. As a result of the open season, Southern states that it has entered into long-term service agreements with seven shippers who have collectively subscribed for a total of 17,000 Mcf per day of firm transportation service on Southern's South Georgia Facilities. Southern states that in order to provide this service, it seeks authorization to construct and operate 7.1 miles of 16-inch pipeline looping on the 12-inch main line of the South Georgia Facilities. Southern further states that the pipeline looping will extend from the discharge side of Southern's Holy Trinity Compressor Station in Russell County, Alabama to the beginning of its 16-inch loop in Stewart County, Georgia.

Southern states that the estimated cost of the proposed project is $6.0 million. Southern further states that the project will be financed through the use of available cash on hand and cash from operations. Southern states that it plans to include the costs and revenues attributable to the proposed facilities in the cost of service and revenues for its South Georgia Facilities on a rolled-in basis in future rate proceedings.

Questions regarding the details of this proposed project should be directed to John Griffin, Southern Natural Gas Company, Post Office Box 2563,

Birmingham, Alabama 35202–2563, call (205) 325–7133.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30984 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–112–000]**

### Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 28, 2000.

Take notice that on November 22, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff Sixth Revised Volume No. 1, Sixth Revised Volume No. 1 and Sixth Revised Sheet No. 647 to be effective on January 1, 2001.

Texas Eastern states that the purpose of this filing is to remove from Section 16 of the General Terms and Conditions of its FERC Gas Tariff certain provisions that are no longer applicable, to revise the phone number of the person to whom complaints should be directed regarding Texas Eastern's compliance with the Commission's gas marketing affiliate rules and to provide for the posting on Texas Eastern's Internet Web site of information regarding shared operating employees and shared facilities, as well as any physical office space barriers and card key protections that may be necessitated by virtue of shared office space, consistent with Commission precedent.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30986 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–34–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Application

November 30, 2000.

Take notice that on November 20, 2000, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 42301, in Docket No. CP01–34–000 filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval for

Transco to abandon certain pipeline facilities, located in offshore Texas, which are portions of the North Padre Island Gathering System and the Central Texas Gathering System (North Padre and Central Texas Gathering Systems), by transfer to Williams Gas Processing-Gulf Coast Company, L.P. (WGP), an affiliate of Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to abandon 3.83 miles of 10-inch pipeline and 18.79 miles of 20-inch pipeline of the North Padre Gathering System, located in the North Padre Island Area and the North Padre Island Area East Addition, offshore Texas by transfer to WFP. Transco also proposes to abandon 4.96 miles of 6-inch pipeline, 4.19 miles of 8-inch pipeline, 3.77 miles of 10-inch pipeline, 64.79 miles of 12-inch pipeline, 11.56 miles of 16-inch pipeline, 116.48 miles of 20-inch pipeline, 23.42 miles of 24-inch pipeline, and 41.15 miles of 30-inch pipeline of the Central Texas Gathering System, located in the Galveston Area, the Brazos Area, the Brazos Area South Addition, the Matagorda Island Area, and the Mustang Island Area East Addition, offshore Texas by transfer to WGP. Transco advises that the facilities will be transferred at net book value, which has been calculated at $34,893,250 as of October 31, 2000.

Transco also requests authorization to abandon its Rate Schedule X–66, under which Transco states that gas has not flowed since 1989. Transco asserts that it has either notified or has caused the notification of the affected parties of its intent to terminate and abandon the affected services, and WGP will begin discussions with the affected parties for continued service.

WGP has concurrently filed a petition for a declaratory order in Docket No. CP01–32–000 requesting that the Commission determine that WGP's acquisition, ownership, and operation of the facilities at issue not subject WGP or any portion of WGP's facilities, rates, or services to the jurisdiction of the Commission under the Natural Gas Act.

Any questions regarding the application should be directed to Randall R. Conklin, Vice President and General Counsel, and Gisela Cherches, Senior Attorney at (713) 215–2000, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the projects. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30982 Filed 12–5–00; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–32–000]**

### Williams Gas Processing—Gulf Cost Company, L.P.; Notice of Petition for Declaratory Order

November 30, 2000.

Take notice that on November 20, 2000, Williams Gas Processing—Gulf Coast Company, L.P. (WGP), P.O. Box 1396, Houston, Texas 77251, in Docket No. CP01–32–000 filed a petition for a declaratory order requesting that the Commission declare that certain pipeline facilities located almost entirely in offshore waters on the Outer Continental Shelf (OCS), offshore Texas to be acquired from WGP's affiliate, Transcontinental Gas Pipe Line Corporation (Transco), would have the primary function of gathering of natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act,

all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

WGP states that the pipeline facilities at issue consist of portions of the North Padre Island Gathering System (North Padre) and the Central Texas Gathering System (Central Texas). Specifically, WGP states that the North Padre facilities consist of 3.83 miles of 10-inch pipeline that begins in North Padre Island (NPI) Block 967 and ends at NPI Block 956 and 18.79 miles of 20-inch pipeline that begins in East Addition Block A–42 and ends at NPI Block 956, offshore Texas. WGP states that the Central Texas facilities consist of 4.96 miles of 6-inch pipeline, 4.19 miles of 8-inch pipeline, 3.77 miles of 10-inch pipeline, 64.79 miles of 12-inch pipeline, 11.56 miles of 16-inch pipeline, 116.48 miles of 20-inch pipeline, 23.42 miles of 24-inch pipeline, and 41.15 miles of 30-inch pipeline in the Brazos Area Block 538, offshore Texas.

Under a Transfer and Assignment Agreement entered into by WGP and Transco, WGP indicates that it will provide gathering services in a manner consistent with open access and non-discriminatory principles. WGP advises that no customers presently receive direct sales service from the subject facilities pursuant to right-of-way agreements or other sales agreements, therefore, no direct sales service will be terminated as a result of the transfer.

WGP states that the primary function of the facilities is gathering, consistent with the criteria set forth in Farmland Industries, Inc. (23 FERC ¶ 61,063 (1983)), as modified in subsequent orders, and in Sea Robin Pipeline Co. (87 FERC ¶ 61,384 (1999), reh'g denied, 92 FERC ¶ 61,072 (2000)).

WGP advises that this petition is a companion to Transco's concurrently filed application in Docket No. CP01–34–000 to abandon the subject facilities by transfer to WGP.

Any questions regarding the application should be directed to Steve Springer, Senior Vice President, at (713) 439–2454, Williams Gas Processing-Gulf Coast Company, L.P., Houston, Texas 77251.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Beginning November 1, 2000, comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before The Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WGP to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30981 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Proposed Change in Land Rights, and Soliciting Comments, Motions to Intervene, and Protests

November 30, 2000.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Change in Land Rights.

b. *Project No:* 2738–049.

c. *Date Filed:* September 27, 2000.

d. *Applicant:* New York State Electric and Gas Corporation (NYSEG).

e. *Name of Project:* Saranac River Hydroelectric Project.

f. *Location:* The subject parcel is located upstream from the Kents Falls dam, near the Kents Falls Reservoir, in Clinton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Carol A. Howland, Project Environmental Specialist, NYSEG, P.O. Box 5224, Binghamton, New York, 13902, (607) 729–2551.

i. *FERC Contact:* Any questions concerning this notice should be addressed to Paul Friedman at (202) 208–1108; e-mail: paul.friedman@ferc.fed.us.

j. *Deadline for filing comments, motions, or protests:* January 5, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, DC 20426. Please include the Project No. (2738–049) on any comments or motions filed. Comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission web site at http://www.ferc.fed/efi/doorbell.htm.

k. *Description of Project:* The Kents Falls development consists of: (1) a 172-foot-wide, 59-foot-high, concrete gravity dam; (2) a reservoir with a surface area of 43 acres; (3) a penstock; (4) a powerhouse; (5) headworks; (6) surge tank; and (7) appurtenant facilities. The change in land rights would be for a 101 acre parcel located within the project boundary for the Kents Falls development. The purpose of the change in land rights is to allow the licensee to convey project lands to Clinton County, to allow for the future expansion of the county's adjacent existing land fill.

l. *Locations of this application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. The filing may be viewed on http://www/ferc/fed.us.online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'' OR ''MOTION TO INTERVENE,'' as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30980 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

November 30, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan.

b. *Project No.:* 10810–015.

c. *Date Filed:* December 15, 1999.

d. *Applicant:* Wolverine Power Corporation.

e. *Name of Project:* Smallwood Project.

f. *Location:* The project is located on the Tittabawassee River in Hay Township, Gladwin County, Michigan. The project does not occupy any Federal or tribal lands.

g. *Field Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Anthony Gamage, Operations Manager, Wolverine Power Corporation, 6000 S. M–30, P.O. Box 147, Edenville, Michigan 48620.

i. *FERC Contact:* Steve Naugle, *steven.naugle@ferc.fed.us,* 202–219–2805.

j. *Deadline for filing comments and or motions:* January 6, 2001. All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Please reference the following number, P–10810–015, on any comments or motions filed.

k. *Description of the Applicant:* The application is a proposed recreation plan required by article 409 of the project license. The plan provides for a fishing access site at the project dam, including a barrier-free fishing pier on the shoreline dike near the dam, a tailwater fishing pier, a 15-vehicle parking area with designated barrier-free parking spaces, a barrier-free restroom, connecting access paths, and directional signs; a canoe portage around the project dam; and signs that identify the project's recreational facilities. The plan also includes design drawings for the proposed recreation facilities, a cost estimate for constructing the facilities, and a schedule for completing construction of the facilities.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–208–1371. The application may be viewed on-line at *http:www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comment filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–30985 Filed 12–5–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[AD–FRL–6912–5]**

## Notice of Deficiency for Clean Air Act Operating Permits Program; Commonwealth of Kentucky

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of deficiency.

**SUMMARY:** Pursuant to its authority at 40 CFR 70.4(i)(1) and 70.10(b)(1), EPA is publishing this Notice of Deficiency for the Commonwealth of Kentucky's Clean Air Act Title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the Commonwealth's audit privilege and immunity law, KRS 224.01–040, unduly restricts Kentucky's ability to adequately administer and enforce the criminal enforcement, civil penalty and public access provisions of its Title V program, which has previously been granted interim approval status. Therefore, Kentucky's Title V program no longer meets minimum federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Kentucky's Title V program approval, but does not effect such a withdrawal. Withdrawal of interim program approval, if necessary, will be accomplished through subsequent rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Kim Pierce, Title V Program Manager, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303–8909, (404) 562–9124.

**SUPPLEMENTARY INFORMATION:**

### I. Description of Action

EPA is publishing a Notice of Deficiency for the Clean Air Act (CAA or Act) Title V program of the Commonwealth of Kentucky, which was granted interim approval on December 14, 1995. This document is being published to satisfy 40 CFR 70.4(i)(1) and 70.10(b)(1), which provide that EPA shall publish in the **Federal Register** a notice of any determination that a Title V permitting authority is not adequately administering or enforcing a 40 CFR part 70 program. The deficiency being noticed relates to Kentucky's audit privilege and immunity law, KRS 224.01–040, which places undue restrictions on the Commonwealth's ability to adequately administer and enforce its Title V program. Because of restrictions contained within Kentucky's audit privilege and immunity law, the Natural Resources and Environmental Protection Cabinet (Cabinet) may, in some circumstances, be unable to: (1) Seek criminal remedies, including fines, (2) recover civil penalties for any violation, and (3) make available to the public all materials available to the Commonwealth that are relevant to a permit decision. Therefore, Kentucky's legal authority no longer meets the requirements of the Title V program and 40 CFR part 70.

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive Title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements that the state permitting authority have authority to ''assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.'' CAA 502(b)(5)(A). In addition, the state permitting authority must have authority ''to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties.'' CAA 502(b)(5)(E). The state permitting authority must also have authority ''to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.'' CAA 502(b)(8). These requirements are echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. See 40 CFR 70.4(b)(3)(i), 70.4(b)(3)(viii), 70.8(h)(2), and 70.11(a)–(b).

EPA interprets section 502(b)(5)(E) of the CAA to mean that to have adequate criminal enforcement authority, criminal fines must be recoverable against any person: (1) Who knowingly violates any applicable Title V requirement, any Title V permit condition, or any Title V fee or filing requirement; (2) against any person who knowingly makes any false material statement, representation, or certification in any Title V form, notice, or report required by a Title V permit; and (3) who knowingly renders inaccurate any required Title V monitoring device or method. 40 CFR 70.11(a)(3)(ii) and (iii). The Kentucky audit privilege and immunity law provides that an environmental audit report shall be privileged and shall not be admissible as evidence in any legal action in any civil, criminal, or administrative proceeding. KRS 224.01–040(3). To meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.11(a)(3)(ii) and (iii), Kentucky law must allow Cabinet officials an unfettered right to access evidence in criminal proceedings and to use evidence of criminal conduct contained in an audit to assess criminal fines and remedies. In addition, requirements contained in the Kentucky audit privilege and immunity law such as the private hearing prior to the use of an audit report and the need to establish probable cause with an independent source may significantly impede criminal investigations and prosecutions and further render Kentucky's criminal enforcement authority inadequate (letter dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky). Because of these provisions in KRS 224.01–040, Kentucky no longer meets the requirements for Title V program approval. To have an approvable Title V program, any Kentucky audit privilege and immunity law must make the privilege outlined in the current law inapplicable to criminal proceedings and also must provide unfettered access to information in criminal proceedings.

EPA also interprets section 502(b)(5)(E) of the CAA to mean that to have adequate civil penalty authority, Kentucky must retain full authority to assess civil penalties for any violation, including violations of (1) Any applicable requirement; (2) any permit condition; (3) any fee or filing requirement; (4) any duty to allow or carry out inspection, entry, or monitoring activities; and (5) any regulation or orders issued by the Commonwealth. 40 CFR 70.11(a)(3)(i). Kentucky's audit privilege and immunity law provides immunity from all civil penalties if certain conditions are met. However, to meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.11(a)(3)(i), Kentucky must retain the ability to collect penalties based on economic gain from noncompliance when it is significant (letter dated July 12, 1996 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental

Protection Cabinet, Commonwealth of Kentucky). The concept of economic benefit relates to any economic gain a violator may have realized as a result of noncompliance regardless of when these gains occur. Although correspondence from Kentucky to EPA addresses the benefit that might accrue after discovery and disclosure (letter dated February 12, 1997 from James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky to John H. Hankinson, Jr., Regional Administrator, EPA Region 4), the relevant time frame for determining economic benefit is the entire period of noncompliance including prior to discovery and disclosure (e.g., facility operates for two years without installing required air emissions control equipment). Because KRS 224.01–040 precludes the Cabinet from recouping economic benefit when the conditions of KRS 224.01–040 are met, Kentucky lacks the legal authority to recover a penalty for ''every violation'' and therefore no longer meets the requirements for Title V program approval. In subsequent correspondence between Kentucky and EPA, including a letter dated March 27, 1997 from Glenda J. Curry, General Counsel, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky to John H. Hankinson, Jr., Regional Administrator, EPA Region 4; and a letter dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky, these issues were discussed and EPA urged Kentucky to remedy them. To date, Kentucky has not effected these changes. To have an approvable Title V program, any Kentucky audit privilege and immunity law must restore full civil penalty authority to the Title V program by allowing for the collection of civil penalties where violations result in significant economic benefit to the violator as a consequence of its noncompliance with Title V.

EPA interprets section 502(b)(8) of the CAA to mean that to have adequate public access authority, Kentucky must assure that the public have access to certain information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in 40 CFR 70.4(b)(3)(viii), and all other materials available to the permitting authority that are relevant to the permit decision. Kentucky's audit privilege and immunity law provides that documents, communications, data, reports, or other information required to be collected, developed, maintained, reported, or made available to a regulatory agency pursuant to this law or any other Federal, state or local law shall not be privileged. KRS 224.01–040(6). This language potentially limits public access to information and renders Kentucky's legal authority to ensure public access to certain information inadequate. Therefore Kentucky no longer meets the requirements for Title V program approval. To meet the requirements of an approvable part 70 program and the requirements of 40 CFR 70.4(b)(3)(viii) and 40 CFR 70.8(h)(2), any Kentucky audit privilege and immunity law must provide that documents, communications, data, reports, or other information required to be collected, developed, maintained, reported, or made available to a regulatory agency or any other person shall not be privileged. This issue was discussed in a letter, dated January 12, 1998 from John H. Hankinson, Jr., Regional Administrator, EPA Region 4 to James E. Bickford, Secretary, Natural Resources and Environmental Protection Cabinet, Commonwealth of Kentucky, and EPA urged Kentucky in that letter to correct it. To date, Kentucky has not effected these changes. To have an approvable Title V program any Kentucky audit privilege and immunity law must provide the public with access to information available to the Commonwealth that is relevant to a Title V permit decision.

40 CFR 70.4(k), 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority no longer meets the requirements of Part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If Kentucky has not taken significant action to assure adequate administration and enforcement of the program within 90 days after publication of this notice of deficiency, and has not corrected the above-identified deficiencies by June 2, 2001, then EPA will take action to withdraw Kentucky's Title V program approval, and may apply any of the sanctions specified in section 179(b) of the Act. 40 CFR 70.4(k) and 70.10(b)(2)–(4).

This notice of deficiency is not itself a proposal to withdraw Kentucky's Title V program approval. Consistent with 40 CFR 70.10(b)(2), EPA will wait 90 days to determine whether the Commonwealth has taken significant action to correct the above-identified deficiencies. Consistent with 40 CFR 70.4(i)(1) and 70.10(b)(4), EPA will wait until June 2, 2001 to determine whether Kentucky has corrected the deficiencies. Any proposal to withdraw approval of Kentucky's Title V program will occur after June 2, 2001.

## II. Administrative Requirements

As noted above, publication of this Notice of Deficiency does not effect a withdrawal of the Commonwealth of Kentucky's Title V program. Program withdrawal, if necessary, will be accomplished through a subsequent notice-and-comment rulemaking. This action does not: (1) Impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4); (2) require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998); or (3) involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The Office of Management and Budget has exempted this action from review under Executive Order 12866 (58 FR 51735, October 4, 1993). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Furthermore, this action does not contain any information collections subject to Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). And because this action is a Notice of Deficiency and does not constitute a rule, Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply. For the same reason, Executive Order 13132: Federalism and section 112(d) of the National Technology Transfer Advancement Act of 1995 do not apply.

Dated: November 29, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 00–31051 Filed 12–05–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00439I; FRL–6757–1]**

## Pesticide Program Dialogue Committee (PPDC); Notice of Invitation for Nominations of Qualified Candidates to be Considered for Appointment to EPA's PPDC

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Office of Pesticide Programs (OPP) is inviting nominations of qualified candidates to consider for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA renewed the Charter for the PPDC in November 1999 for a two–year term. EPA intends to seek renewal of the PPDC Charter for another two–year term in November 2001 in accordance with the Federal Advisory Committee Act, 5 U.S.C., App.2 section 9(c).

**DATES:** Nominations will be accepted until 5 p.m. on December 29, 2000.

**ADDRESSES:** Nominations should be submitted in writing to Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC; e-mail address: fehrenbach.margie@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** By mail: Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775 or (703) 305–7090; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are concerned about implementation of the Food Quality Protection Act (Public Law 104–170) which was passed in 1996 to strengthen the nation's system for regulating pesticides on food; the Federal Insecticide, Fungicide, and Rodenticide Act; and the Federal Food, Drug, and Cosmetic Act. PPDC was established in 1995 to provide a forum for a diverse group of stakeholders to provide advice and recommendations to EPA regarding pesticide regulatory and policy issues. 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 under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *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,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information regarding PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ and select ppdc.

2. *In person.* The Agency has established an administrative record for all PPDC meetings and workgroups under docket control number OPP–00439. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Pesticide Program Dialogue Committee and its workgroups, including any information claimed as Confidential Business Information (CBI). This administrative 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 administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

### III. Background

The Office of Pesticide Programs is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Pesticide Program Dialogue Committee (PPDC) is a federal advisory committee under the Federal Advisory Committee Act (FACA), Public Law 92–463. It was established in September 1995 for a two–year term and renewed in November 1997 and November 1999. PPDC provides advice and recommendations to the Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA intends to appoint members to one– or two–year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: environmental/public interest and consumer groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Potential candidates should submit the following information: name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications and other relevant information as part of the consideration process. Any interested person and/organization may submit the name(s) of qualified persons.

Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

### List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: November 28, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–30916 Filed 12–05–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–100162; FRL–6757–4]**

## Arctic Slope Regional Corporation (ASRC) Aerospace; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Arctic Slope Regional Corporation (ASRC) Aerospace in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). ASRC Aerospace has been awarded a contract to perform work for OPP, and access to this information will enable ASRC Aerospace to fulfill the obligations of the contract.

**DATES:** ASRC Aerospace will be given access to this information on or before December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to 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 under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

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,'' ''Regulations and Proposed Rules,'' 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/.

### II. Contractor Requirements

Under contract number 68–W0–0102, work assignment 001, the contractor will perform the following:

The Public Information and Records Integrity Branch in responding to Freedom of Information Act (FOIA) requests and public inquiries expeditiously shall use contractor services to perform distinct tasks in a multi-task response process, such as gathering records identified as responsive by EPA, filling out standard response forms in accordance with office procedures, packaging the response after completion by the EPA caseworker, compiling documents to assist information collection activities, and managing an OPP/FOIA website and records/internal computer systems associated with this work.

The contractor will process FOIA requests assigned to OPP and maintain appropriate case files and records which may involve all pending and registered sensitive information.

The contractor must have access to CBI in order to conduct records management activities associated with the OPP's FOIA and public response activities.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with ASRC Aerospace, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, ASRC Aerospace is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to ASRC Aerospace until the requirements in this document have been fully satisfied. Records of information provided to ASRC Aerospace will be maintained by EPA Project Officers for the contract. All information supplied to ASRC Aerospace by EPA for use in connection with the contract will be returned to EPA when ASRC Aerospace has completed its work.

### List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: November 28, 2000.

**Joanne Martin,**

*Acting Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 00–31061 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34203F; FRL–6758–2]**

## Chlorpyrifos; Cancellation Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces a cancellation order that was signed November 27, 2000, announcing the use deletions and cancellations as requested by the companies that hold the registrations of pesticide products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 20, 2000, notice of receipt of requests for amendments to delete uses and receipt of a request for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary use deletions and registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

**DATES:** The cancellations are effective December 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). 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 under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly to http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34203D. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

### *A. Background*

In a memorandum of agreement (Agreement) effective June 7, 2000, EPA and a number of registrants of pesticide products containing chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. Shortly thereafter, EPA and several other pesticide registrants of manufacturing-use products containing chlorpyrifos signed ancillary agreements in which the parties agreed to comply with the terms of the June 7, 2000, agreement. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As part of the Agreement, the signatory registrants that hold the pesticide registrations of manufacturing-use pesticide products containing chlorpyrifos have asked EPA to cancel their registrations for these products. In addition, these companies asked EPA to cancel or amend their registrations for end-use products containing chlorpyrifos. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced the Agency's receipt of these requests from the registrants on September 20, 2000 (65 FR 56886). With respect to the registration amendments, the companies have asked EPA to amend end-use product registrations to delete the following uses: all termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on tomatoes and post-bloom apple trees. With respect to the registration cancellations, the companies have submitted replacement applications for registration with new labeling that would also eliminate all of these uses. In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb/a.i. per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

On September 20, 2000, (65 FR 56886) (FRL–6743–7), EPA published in the **Federal Register** a notice of the Agency's receipt of amendments and cancellations for manufacturing-use products and associated end-use products for signatories of the Memorandum of Agreement that was signed on June 7, 2000 and subsequent ancillary agreements. A copy of the Memorandum of Agreement that was signed on June 7, 2000 is located in docket control number OPP–34203D.

### *B. Requests for Voluntary Cancellation of Manufacturing-Use Products*

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), the registrants have submitted requests for voluntary cancellation of registrations for their manufacturing-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

| Company | Reg. No. | Product |
|---|---|---|
| Aventis Environmental Science USA | 432–570 | Ultratec Insecticide w/ SBP–1382/ Chlorpyrifos Trans. E.C. 1.6%—16% |
| | 432–571 | Ultratec Insecticide w/ SBP–1382/ Chlorpyrifos Trans.E.C. 3.2% – 16% |
| | 432–615 | UltratecInsecticide w/ ChlorpyrifosEsbiothrin Trans.E.C. 2.5% –25% |
| | 432–649 | UltratecInsecticide w/ SBP–1382/ Chlorpyrifos Trans.E.C. 1.6% – 16% |
| | 432–661 | UltratecInsecticide w/Chlorpyrifos/ EsbiothrinTrans. |
| | 432–662 | UltratecInsecticide w/ ChlorpyrifosTrans. Emuls. 25% |
| | 432–682 | UltratecInsecticide w/Chlorpyrifos/ Pyr/PBO Trans.Emuls. 1.5 – 7.5 – 15 |
| | 432–692 | UltratecInsecticide w/ SBP–1382/ Chlorpyrifos Trans. E.C.3.2%–16% LO |
| | 432–718 | SBP–1382/ Chlorpyrifos Trans.E.C. 3.2% – 16% LO For Pres. Spray |
| | 432–1019 | Niagara P–D 5Residual InsecticideIntermediate |
| | 432–1095 | PyrenoneDursban Aqueous Base |
| | 432–1104 | PyrenoneDursban W–B |
| | 432–1106 | PyrenoneDursban Aqueous Base II |
| Verdant Brands, Inc. | 769–690 | SMCP DFC–4Formulators Concentrate |
| McLaughlin Gormley King Company | 1021–1215 | Pyrocide Intermediate 7129 |
| | 1021–1220 | D-Trans Intermediate 1957 |
| | 1021–1221 | Pyrocide Intermediate 7130 |
| | 1021–1434 | Esbiol Intermediate 2235 |
| | 1021–1438 | D-Trans Intermediate 2247 |

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 1021–1444 | Multicide Intermediate 2253 |
| | 1021–1506 | D-Trans Intermediate 2321 |
| | 1021–1707 | Multicide Concentrate 2748 |
| | 1021–1717 | Multicide Intermediate 2745 |
| Griffin LLC | 1812–429 | Questor MUP Insecticide |
| Cheminova, Inc. | 4787–27 | Chlorpyrifos Technical |
| | 4787–29 | Cyren MUC |
| | 4787–30 | Cyren 150 Concentrate |
| | 4787–32 | Cyren RT |
| 3M Company | 10350–10 | Dursban 20 MEC |
| Makhteshim-Agan of North America Inc. | 11678–45 | Pyrinex Chlorpyrifos Insecticide |
| Platte Chemical Company | 34704–801 | Chlorpyrifos Technical |
| Luxembourg Industries (Pamol) Ltd. | 42519–17 | DorsanTechnical |
| Insecta Sales & Research, Inc. | 45600–6 | Insecta No.105 |
| Micro-Flo Company | 51036–217 | Chlorpyrifos61.5% MUP |
| Control Solutions,Inc. | 53883–34 | Martin's 6 lb. Chlorpyrifos |
| Dow AgroSciences LLC | 62719–15 | Dursban F Insecticidal Chemical |
| | 62719–44 | Dursban R |
| | 62719–45 | Dursban 30 SEC |
| | 62719–66 | Dursban HF Insecticidal Concentrate |
| | 62719–76 | Lentrek 6 |
| | 62719–78 | Dursban W Insecticidal Chemical |
| | 62719–225 | XRM–5222 |
| Gharda USA, Inc. | 70907–1 | Chlorpyrifos Technical |
| | 70907–6 | Chlorpyrifos 6 Manufacturing Concentrate |
| | 70907–14 | Chlorpyrifos 4 Manufacturing Concentrate |

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section6(f)(1)(C). One public comment was submitted to the docket in response to EPA's request for comments.This comment was a generic comment on the overall organophosphate process focusing on the development of a new process for review of the organophosphate pesticides that did not relate to this action specifically.

*C. Requests for Voluntary Cancellation of End-Use Products*

In addition to requesting voluntary cancellation of manufacturing-use products, several registrants have submitted requests for voluntary cancellation of some of their registrations for end-use pesticide products containing chlorpyrifos. The end-use registrations for which cancellation was requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

| Company | Reg. No. | Product |
|---|---|---|
| Aventis Environmental Science USA | 432–566 | SBP–1382/ Chlorpyrifos Transparent Emulsion Spray 0.05% + 0.5% |
| | 432–567 | SBP–1382/ ChlorpyrifosTransparent Emulsion Dilutable Conc. 1.6% + 16% |
| | 432–568 | Ultratec Insecticide w/ SBP–1382/ ChlorpyTrans. EM.Dil.Conc. 3.2% + 16% |
| | 432–569 | SBP–1382/ ChlorpyrifosTransparent Emulsion Spray0.1 % + 0.5% |
| | 432–1027 | PyrenoneDursban Roach & Ant Spray |
| | 432–1059 | PyrenoneDursban Dual Use E.C. |
| | 432–1101 | AqueousResidual Spray |
| | 432–1107 | Pyrenone Dursban Water-Based Pressurized Spray |
| Verdant Brands, Inc. | 769–562 | Mole Cricket Bait D |
| | 769–576 | Sureco Indoor Pest Control |

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 769–578 | Sureco Yard and Kennel Spray Concentrate |
| | 769–607 | R&M InsectSpray withResmethrin/ Dursban |
| | 769–666 | Dursban 1E Insecticide |
| | 769–668 | SMCP D/V217 Insecticide |
| | 769–672 | SMCP Residual Roach Spray |
| | 769–685 | SMCP Dursban Household Insecticide |
| | 769–694 | SMCPXtraban Roach Concentrate |
| | 769–697 | SMCP Dursban Plus Turf Insecticide |
| | 769–715 | SMCP Lawn-Gard Spray |
| | 769–716 | SMCP Lawn and Ornamental Spray |
| | 769–717 | Dursban .8% Granular Insecticide |
| | 769–721 | SMCP Dursban Granular Insecticide |
| | 769–731 | SMCP Home Lawn and Ornamental Spray |
| | 769–735 | SMCP Dursban Cricket Bait 200 |
| | 769–737 | SMCP Blatta-Bits Roach Bait Insecticide |
| | 769–738 | Frank's Finest Roach/Flea Spray |
| | 769–781 | AFC Residual Insect Spray |
| | 769–800 | Superior Dursban 4E Emulsifiable Concentrate |
| | 769–801 | Superior Dursban 2E |
| | 769–804 | Superior Delve Concentrate |
| | 769–826 | Sureco T.A.S.K |
| | 769–827 | Dursban Plus Dichlovos |
| | 769–828 | Dursban 1.4% G |
| | 769–829 | SMCP 32–4–7 Fertilizer with Dursban |
| | 769–831 | SMCP 40–0–0 with Dursban |
| | 769–873 | Dursban 135 EC |
| | 769–880 | Pratt Dursban 250 EC |
| | 769–936 | Warner Enterprises Residual Spray |
| | 769–952 | Dursban G5 Granular |
| | 769–953 | Pratt Dursban G232 Granular Lawn Insect Control for Professional Use |
| | 769–962 | Ulti-Mate Homeowner Pest Control Concentrate |
| McLaughlin Gormley King Company | 1021–1362 | Pyrocide Concentrate 7254 |
| | 1021–1416 | Pyrocide Residual Contact Spray 7335 |
| | 1021–1435 | Esbiol Residual Contact Spray 2236 |
| | 1021–1439 | D-Trans Concentrate 2249 |
| | 1021–1605 | D-Trans Residual Spray 2580 |
| | 1021–1668 | Evercide Residual Spray 2640 |
| | 1021–1693 | Evercide Residual Pump Spray 2641 |
| | 1021–1716 | Multicide Pressurized Ant and Roach Spray 27451 |
| Griffin LLC | 1812–427 | Pyrinex 4EC Insecticide |
| | 1812–428 | Pyrinex 2 EC Area Insecticide |
| | 1812–443 | Questor LO Insecticide |
| 3M Company | 10350–12 | Duratrol Yard Spray Concentrate |
| Luxembourg Industries (Pamol) Ltd. | 42519–18 | Dorsan 4E–41 |
| Micro-Flo Company | 51036–102 | Chlorpyrifos 0.5% RTU |
| | 51036–118 | Chlorpyrifos 4E LO Insecticide |
| | 51036–119 | Chlorpyrifos 1E |
| | 51036–223 | Chloroban 4–E |
| | 51036–303 | Chlorpyrifos 5.3% |
| Control Solutions, Inc. | 53883–36 | Martin's Surrender Chlorpyrifos TC |
| | 53883–37 | Martin's Chlorpyrifos 2E |
| | 53883–49 | Martin's Dursban 1L Lawn and Ornamental Plant Insecticide |
| | 53883–53 | Martin's Dursban Pest Control |
| | 53883–55 | Martin's Termite and Soil Insect Control |
| Dow AgroSciences LLC | 62719–22 | Dursban 25W |
| | 62719–23 | Lorsban 4E |
| | 62719–29 | Lorsban 1–PE |
| | 62719–41 | Dursban 4 Plus |
| | 62719–46 | Dursban WB05 |
| | 62719–55 | Dursban LO |
| | 62719–56 | Dursban 1–12 Insecticide |
| | 62719–74 | Dursban ME |
| | 62719–85 | Lorsban 7.5 G |
| | 62719–163 | Dursban 50 DF |
| | 62719–197 | Dursban WB05 III |
| | 62719–235 | Dursban Lawn and Ornamental Insecticide |
| | 62719–252 | Dursban 50WSP Insecticide in Water Soluble Packets |
| | 62719–269 | Dursban NXS–4 |
| | 62719–281 | Dursban NXS05 |
| | 62719–283 | Dursban ME02 + ETOC |
| | 62719–284 | Dursban NXS–6 |
| | 62719–298 | Dursban ME 1.7 |
| Cheminova, Inc. | 67760–5 | Cyren 1E |
| | 67760–22 | Cheminova Chlorpyrifos 4E–AG–SG |
| | 67760–23 | Cyren Turf and Ornamental Insecticide |
| | 67760–24 | Cyren 1/2 G Granular Insecticide |
| | 67760–25 | Cyren 1G |
| | 67760–32 | Cyren 2E XL |
| Platte Chemical Company | 2393–245 | Hopkins Lincoln Granules |
| | 34704–305 | Hopkins Lincoln Granules |
| | 34704–413 | Dursban 1 Coated Granules |
| | 34704–449 | Clean Crop Chlorpyrifos 1.14G Insecticide and Fertilizer |

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

| Company | Reg. No. | Product |
|---|---|---|
| | 34704–523 | Clean Crop Dursban Insect Spray |
| | 34704–526 | Pest Control for Home and Garden |
| | 34704–541 | Dursban 4E |
| | 34704–748 | Clean Crop Household Insect Spray |
| | 34704–765 | Clean Crop Dursban 1 |

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section 6(f)(1)(C).

*Requests for voluntary amendments to delete uses from the registrations of end-use products.* Pursuant to section 6(f)(1)(A) of FIFRA, the signatory registrants have also submitted requests to amend all of their other end-use registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses. The registrations for which amendments to delete uses were requested are identified in the following Table 3.

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

| Company | Reg. No. | Product/SLNs |
|---|---|---|
| Verdant Brands, Inc. | 769–641 | Dursban 2EInsecticide |
| | 769–662 | SMCP Dursban .5% Granular Insecticide |
| | 769–679 | Dursban 1% Granular Insecticide |
| | 769–680 | Dursban Mole Cricket Bait |
| | 769–699 | Dursban 4E Insecticide |
| | 769–726 | Dursban 1G Granular Insecticide |
| | 769–808 | Banzol |
| | 769–825 | SMCP Dursban 2.5% G Insecticide |
| | 769–940 | Dursban Plus Insecticide |
| Griffin LLC | 1812–403 | Chlorfos 4E Insecticide |
| | 1812–404 | Chlorfos 15G |
| 3M Company | 10350–22 | MEC Chlorpyrifos Livestock Premise Spray Concentrate |
| Platte Chemical Company | 34704–55 | Clean Crop Chlorpyrifos 1/2G Turf Insecticide |
| | 34704–65 | Chlorpyrifos 2E |
| | 34704–66 | Clean Crop Chlorpyrifos 4E Insecticide |
| | 34704–423 | Dursban 2 Coated Granules |
| | 34704–448 | Clean Crop Dursban 1G Insecticide |
| | 34704–587 | Chlorpyrifos-thiram 7.5–7.5G |
| | 34704–693 | Clean Crop Chlorpyrifos 50WP Seed Treater |
| Luxembourg Industries (Pamol) Ltd. | 42519–19 | Dorsan 4E–45 |
| | 42519–20 | Dorsan 2E |
| | 42519–21 | Dorsan 4E |
| Insecta Sales & Research, Inc. | 45600–1 | Insecta |
| | 45600–11 | Insecta 1000 |
| | 45600–17 | Insecta for Manholes |
| Control Solutions, Inc. | 53883–48 | Martin's Dursban Insecticide Granules |
| | 53883–52 | Martin's Dursban 21/2% Insecticide Granules |
| Micro-Flo Company | 51036–117 | Chlorpyrifos 1/2% Bait |
| | 51036–122 | Micro-flo Chlorpyrifos Termite Concentrate |
| | 51036–152 | Micro-Flo Chlorpyrifos 2E |
| | 51036–153 | Chlorpyrifos1% Bait |
| | 51036–154 | Chlorpyrifos 4–E Insecticide |
| | 51036–216 | Micro-Flo Chlorpyrifos 4E Wood Treatment |
| | 51036–220 | 1% Chlorpyrifos Granule |
| | 51036–247 | Chlorpyrifos 2.5% G |
| | 51036–259 | Chlorpyrifos 2.32 Bait |
| | 51036–263 | Chlorpyrifos 1/2% Granule |
| | 51036–264 | Chlorpyrifos 2.32% Granule |
| | 51036–291 | Chlorpyrifos 4 AG |
| | 51036–300 | Chlorpyrifos 15G |
| Dow AgroSciences LLC | 62719–11 | Dursban 4E Insecticide |
| | 62719–14 | Dursban 1/2 G Granular |
| | 62719–34 | Lorsban 15G |
| | 62719–35 | Dursban Turf Insecticide |
| | 62719–39 | Lorsban 50W Wettable Powder (SLNs; FL9000500, GA93000300) |
| | 62719–47 | Dursban TC |
| | 62719–54 | Dursban 1–D Insecticide |
| | 62719–65 | Dursban 2E |
| | 62719–68 | Dursban 50W |
| | 62719–69 | Dursban WT Insecticidal Wood Treatment |
| | 62719–72 | Dursban 50W in Water Soluble Packets |
| | 62719–77 | Lentrek 6 WT |
| | 62719–88 | Dursban ME20 Microencapsulated Insecticide |
| | 62719–89 | Dursban ME04 Microencapsulated Insecticide |
| | 62719–90 | Dursban ME02 Microencapsulated Insecticide |
| | 62719–166 | Dursban Pro |
| | 62719–167 | Equity |
| | 62719–210 | Dursban 1G Insecticide |
| | 62719–221 | Lorsban 50W Insecticide in Water Soluble Packets (SLNs; FL92001000, GA93000400) |
| | 62719–254 | Dursban 4E–N |
| | 62719–255 | Dursban 50W Nursery in Water Soluble Packets |

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

| Company | Reg. No. | Product/SLNs |
|---|---|---|
| | 62719–271 | Dursban 1F |
| | 62719–276 | Dursban 2.5G |
| | 62719–293 | Dursban 75WG |
| | 62719–295 | Lorsban 30G |
| | 62719–316 | Dursban Plus Fertilizer 2 |
| Makhteshim-Agan of North America Inc. | 66222–3 | Pyrinex Chlorpyrifos 4EC |
| | 66222–4 | Pyrinex Chlorpyrifos Lawn Chinch Bug and Sod Webworm Control |
| | 66222–5 | Pyrinex Chlorpyrifos Lawn and Ornamental Insecticide w/ Dursban 2E |
| | 66222–6 | Pyrinex Chlorpyrifos Dursban 2E Insecticide |
| | 66222–17 | Pyrinex Chlorpyrifos Termiticide Concentrate |
| Cheminova, Inc. | 67760–6 | Cyren 2E |
| | 67760–7 | Cyren 4E Insecticide |
| | 67760–10 | Cyren TC |
| | 67760–31 | Cyren 2 TC |
| Gharda USA, Inc. | 70907–2 | Regatta 4E Chlorpyrifos Professional Insecticide |
| | 70907–4 | Pilot 4E Chlorpyrifos Agricultural Insecticide |
| | 70907–7 | Navigator 4 TC Chlorpyrifos Termite Concentrate |
| | 70907–8 | Pilot 50W Chlorpyrifos Agricultural Insecticide |
| | 70907–9 | Regatta 50W Chlorpyrifos Professional Insecticide |
| | 70907–13 | Navigator 4WT Chlorpyrifos Wood Treatment Concentrate |

In the **Federal Register** notice published on September 20, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section 6(f)(1)(C).

## III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 3 are hereby amended to delete the following uses: All post-construction termite control uses, except spot and local treatment ( use of such products for spot and local treatment will be prohibited after December 31, 2002 by product labeling); all other termite control uses, effective December 31, 2004 (unless EPA has made a decision prior to that date that preconstruction use may continue); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential, non-agricultural uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential, non-agricultural sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on tomatoes and post-bloom apple trees (except for tree trunk use). The Agency also orders that the registrations identified in Tables 1 and 2 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1–3 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this document will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

## IV. Existing Stocks Provisions

For purposes of this Order, the term existing stocks is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

### *A. Manufacturing-Use Products*

1. *Distribution or sale* . The distribution or sale of existing stocks of any manufacturing-use product identified in Table 1 will not be lawful under FIFRA as of December 27, 2000, except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

2. *Use for producing other manufacturing-use products*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any other manufacturing-use product will not be lawful under FIFRA as of December 1, 2000 unless such product bears an EPA-approved label that is consistent with the provisions of the Agreement.

3. *Use for producing end-use products*—(i) *Restricted use and package size limitations*. (a) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product that is an emulsifiable concentrate (EC) will not be lawful under FIFRA as of December 1, 2000, unless the end-use product is labeled for restricted use;

(b) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled for any agricultural use (other than cattle ear tags) and that is not an EC, will not be lawful under FIFRA as of December 1, 2000, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(c) The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled solely for non-agricultural uses (other than containerized baits in Child Resistant Packaging (CRP)) and that is not an EC, will not be lawful under FIFRA as of December 1, 2000, unless the product is either labeled for restricted use or

packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Use in products labeled for use on tomatoes or use on apple trees post bloom*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into end-use products bearing instructions for use on tomatoes or use on apple trees following bloom (except for tree trunk use) will not be lawful under FIFRA as of December 1, 2000.

(iii) *Use in products labeled for other end-uses*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product bearing instructions for any of the following uses will not be lawful under FIFRA after December 1, 2000:

(a) All termite control uses, unless the end-use product bears directions for use of a maximum 0.5% chlorpyrifos end-use dilution;

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the end-use product states that the product may not be used for spot and local treatment after December 31, 2002;

(c) Indoor residential, except for containerized baits in CRP;

(d) Indoor non-residential, except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill;

(e) Outdoor residential, except for products bearing labeling solely for one or more of the following public health uses: individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers and underground utility cable and conduits.

(iv) *Final use date for any manufacturing-use product labeled for termite control*. The use of existing stocks of any manufacturing-use product identified in Table 1 for formulation into any end-use product labeled for termite control will not be lawful under FIFRA after December 31, 2004, except that EPA will permit the continued use for the manufacture of end-use products labeled solely for pre-construction termite control if EPA has issued a written determination that the pre-construction use may continue consistent with the requirements of FIFRA.

4. *All other use* . Any use of existing stocks of a canceled manufacturing-use product identified in Table 1 that is not otherwise limited by this order may continue until such stocks are exhausted provided such use is in accordance with the existing label of that product.

*B. End-Use Products*

1. *Distribution, sale of products bearing instructions for use on tomatoes or apple trees post bloom*. The distribution or sale of existing stocks by any person of any product listed in Table 2 or 3 that bears instructions for post-bloom application to apple trees (other than tree trunk use) or use on tomatoes will not be lawful under FIFRA after December 31, 2000, except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal. Any use of such products for post-bloom application to apple trees (other than tree trunk use) or tomatoes will not be lawful after December 31, 2000. All other use of such products may continue until stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

2. *Distribution or sale by registrants of products bearing other uses*— (i) *Restricted use and package size limitations*. Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal:

(a) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 2 or 3 that is an EC will not be lawful under FIFRA after February 1, 2001 unless the product is labeled as restricted use;

(b) The distribution or sale by registrants of existing stocks of any product listed in Table 2 or 3 labeled for any agricultural use and that is not an EC, will not be lawful under FIFRA after February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(c) The distribution or sale by registrants of existing stocks of any product listed in Table 2 or 3 labeled solely for non-agricultural uses (other than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Prohibited uses* . Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 2 or 3 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(a) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos end-use dilution;

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002;

(c) Indoor residential except for containerized baits in CRP;

(d) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill;

(e) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public

health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits.

3. *Retail and other distribution or sale*,. The retail sale of existing stocks of products listed in Table 2 or 3 bearing instructions for the prohibited uses set forth in Unit IV.B.2.(ii)(a)-(f) of this document will not be lawful under FIFRA after December 31, 2001. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

4. *Final distribution, sale and use date for preconstruction termite control*. The distribution, sale or use of any product listed in Table 2 or 3 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks*. Except for products bearing those uses identified above in Units IV.B.1. and IV.B.4. of this document, EPA intends to permit the use of existing stocks of products listed in Table 2 or 3 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

**List of Subjects**

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: November 27, 2000.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–30917 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–64053; FRL–6755–6]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 5, 2001 unless indicated otherwise.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?*

1. *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'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

### II. What Action is the Agency Taking?

This Notice announces receipt by the Agency of applications from registrants to delete uses in eight pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration No. | Product Name | Chemical Name | Delete From Label |
|---|---|---|---|
| 000264–00637 | Thiodan Technical | Endosulfan | Sugarcane |
| 000279–02306 | Thiodan Technical Insecticide | Endosulfan | Sugarcane |
| 001812–00404 | Chlorfos 15G | Chlorpyrifos | Popcorn |
| 002724–00450 | Zoecon 9001 EW | Propetamphos | All broadcast and spot treatment, including all residential uses |
| 010163–00158 | Gowan Chlorpyrifos 4E | Chlorpyrifos | Popcorn |
| 011678–00005 | Thionex (Endosulfan) Technical | Endosulfan | Sugarcane |
| 019713–00319 | Velsicol Technical Endosulfan Insecticide | Endosulfan | Sugarcane |

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| Registration No. | Product Name | Chemical Name | Delete From Label |
|---|---|---|---|
| 066222–00002 | Thionex Endosulfan 50WP Insecticide | Endosulfan | Alfalfa grown for forage, artichokes, peas (seed crop only), sugar beets, sunflowers, leather leaf fern, ornamentals (greenhouse) ornamentals (outdoors — except trees and shrubs) |

NOTE: The comment period has been waived for EPA Registration 001812–00404, 002724–00450 and 010163–00158

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before January 5, 2001 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 000264 | Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. |
| 000279 | FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103. |
| 001812 | Griffin L.L.C., Box 1847, Valdosta Ga 316, GA 31603. |
| 002724 | Wellmark International, 1100 E. Woodfield Rd., Suite 500, Schaumburg, IL 60173. |
| 010163 | Gowan Co., Box 5569, Yuma Az 853, AZ 85366. |
| 011678 | Makhteshim Chemical Works, Ltd, c/o Makhteshim-Agan of N. America Inc., 551 Fifth Ave, Suite 1100, New York, NY 10176. |
| 019713 | Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113. |
| 066222 | Makhteshim-Agan of North America Inc., 551 Fifth Ave, Suite 1100, New York, NY 10176. |

## III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked January 5, 2001.

2. *In Person or by courier*: Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

## V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18–months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

## List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 16, 2000.

**Richard D. Schmitt,**

*Associate Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 00–31060 Filed 12–5–00; 8:45 a.m.]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–978; FRL–6748–9]**

## Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–978, must be received on or before January 5, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–978 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C),

Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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,'' ''Regulations and Proposed Rules,'' 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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–978. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–978 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–978. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. 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 person identified under **FOR FURTHER INFORMATION CONTACT.**

### *E. 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. Make sure to submit your comments by the deadline in this notice.
7. 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.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency

of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 17, 2000.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

*Summaries of Petitions*

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the view of the petitioner. EPA is publishing the petitioner's summaries verbatim without editing it in any way. The petitioner's summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemicals residues or an explanation of why no such method is needed.

**1. Auxein Corporation**

*PP 7F4842 and PP 7F4843*

EPA has received pesticide petitions PP 7F4842 and PP 7F4843 from Auxein Corporation, 3125 Sovereign Drive, Suite B, Lansing, MI 48911–4240, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish amendments of existing tolerance exemptions for the biochemical pesticides L-glutamic acid and gamma aminobutyric acid (GABA) pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended. Auxein Corporation has submitted the following summaries of information, data, and arguments in support of their pesticide petitions. These summaries were prepared by Auxein Corporation and EPA has not fully evaluated the merits of the pesticide petitions. The summaries may have been edited by EPA if the terminology used was unclear, the summaries contained extraneous material, or the summaries unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

*PP 7F4842*

In the **Federal Register** of October 29, 1997 (62 FR 56268, FRL–5751–3), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PF–772) by Auxein Corporation. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. This petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent glutamic acid in or on all raw agricultural commodities. The final rule exempted the biochemical glutamic acid from the requirement of a tolerance on all raw agricultural commodities when used as a plant growth enhancer in accordance with good agricultural practices. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on January 7, 1998 (63 FR 679–682) (FRL–5764–4) amending 40 CFR 1180.1187. An amendment to this petition and thus the final rule establishing a tolerance exemption, was requested by Auxein Corporation to change the name of the active ingredient from the above to L-glutamic acid. In the **Federal Register** of September 25, 1998 (63 FR 51302) Auxein Corporation requested a correction to the name. Throughout the preamble to the final rule and in the codified text (40 CFR 180.1187), reference was made to ''glutamic acid.'' Auxein Corporation brought to the Agency's attention that the requested tolerance was for residues of ''L-glutamic acid'' rather than ''glutamic acid.'' This technical amendment corrected the preamble and the codified text in the January 7, 1998 final rule. Therefore, in the preamble to FR Doc. 98–359, published at 63 FR 679, FRL–6029–1, January 7, 1998, reference to ''glutamic acid'' was changed to refer to ''L-glutamic acid.'' Recent research performed on this active ingredient indicates the method of protection is not restricted to growth enhancement, and Auxein wishes to delete the wording ''when used as a plant growth enhancer'' from the present exemption as well as correct the term ''raw agricultural commodities'' to ''food commodities.''

*A. Product Name and Proposed Use Practices*

*AuxiGro WP Plant Metabolic Primer.* When used as directed, AuxiGro has been shown to increase yields and/or quality of treated commodities, early ripening in certain vegetables, increased root growth, early flowering and fruit set, faster seed germination and rooting.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues.* Supporting data for this section were submitted with PP 7F4842. Supporting product chemistry data for the end-use product, AuxiGro WP (EPA Reg. No. 70810–1 was submitted on June 12, 1997 (MRID 44296801) and February 16, 1998 (MRID 44538701).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Supporting data for this section was submitted with PP 7F4842.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Supporting data for this section was submitted with PP 7F4842.

*C. Mammalian Toxicological Profile*

Supporting data for this section was submitted with PP 7F4842.

*D. Aggregate Exposure*

1. *Dietary exposure*— i. *Food.* No differences in exposure are expected compared to those described in PP 7F4842.

ii. *Drinking water.* No differences in exposure are expected compared to those described in PP 7F4842.

2. *Non-dietary exposure.* No differences in exposure are expected compared to those described in PP 7F4842.

*E. Cumulative Exposure*

No differences in exposure are expected compared to those described in PP 7F4842.

*F. Safety Determination*

1. *U.S. population.* Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of L-glutamic acid. This includes all dietary exposure and all other exposure for which there is reliable information. This is a reasonable conclusion because of the preponderance of data from open literature supporting the safe use of L-glutamic acid in foods, the supporting acute toxicity data on AuxiGro, and inconsequential exposure resulting from its application to crops.

2. *Infants and children.* No differences in exposure are expected

compared to those described in PP 7F4842.

*G. Existing Tolerances*

Existing tolerances have been established for L-glutamic acid, 40 CFR part 180.1187.

*H. International Tolerances*

No Codex maximum residue levels have been established for L-glutamic acid.

*PP 7F4843*

In the **Federal Register** of October 29, 1997 (62 FR 57170, FRL–5751–3) EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide tolerance petition (PF–772) by Auxein Corporation. This notice included a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the FQPA of 1996. This petition requested that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent gamma aminobutyric acid in or on all food commodities. The final rule exempted the biochemical gamma aminobutyric acid from the requirement of a tolerance on all food commodities when used as a plant growth enhancer in accordance with good agricultural practices. EPA published a final rule establishing a tolerance exemption in the **Federal Register** on January 7, 1998 (63 FR 676–679) (FRL–5764–5) amending 40 CFR 1180.1188. Recent research performed on this active ingredient indicates the method of protection is not restricted to growth enhancement, and Auxein Corporation wishes to delete the wording ''when used as a plant growth enhancer'' from the present exemption.

*A. Product Name and Proposed Use Practices*

*AuxiGro WP Plant Metabolic Primer.* When used as directed, AuxiGro has been shown to increase yields and/or quality of treated commodities, early ripening in certain vegetables, increased root growth, early flowering and fruit set, faster seed germination and rooting.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues.* Supporting data for this section were submitted with PP 7F4843. Supporting product chemistry data for the end-use product, AuxiGro WP (EPA Reg. No. 70810–1) were submitted on June 12, 1997 (MRID 44296801) and February 16, 1998 (MRID 44538701).

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Supporting data for this section were submitted with PP 7F4843.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Supporting data for this section were submitted with PP 7F4843.

*C. Mammalian Toxicological Profile*

Supporting data for this section were submitted with PP 7F4843.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food.* No differences in exposure are expected compared to those described in PP 7F4843.

ii. *Drinking water.* No differences in exposure are expected compared to those described in PP 7F4843.

2. *Non-dietary exposure.* No differences in exposure are expected compared to those described in PP 7F4843.

*E. Cumulative Exposure*

No differences in exposure are expected compared to those described in PP 7F4843.

*F. Safety Determination*

1. *U.S. population.* Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of GABA. This includes all anticipated dietary exposure and all other exposures for which there is reliable information. This is a reasonable conclusion because exposure to GABA resulting from label directed use is inconsequential, does not cross the blood-brain barrier, and is consumed daily by the human population from naturally occurring sources.

2. *Infants and children.* No differences in exposure are expected compared to those described in PP 7F4843.

*G. Existing Tolerances*

Existing tolerances have been extablished for gamma aminobutyric acid (GABA), 40 CFR part 180.1188.

*H. International Tolerances*

No Codex maximum residue levels have been established for gamma aminobutyric acid (GABA)

[FR Doc. 00–30918 Filed 12–5–00; 8:45a.m.]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–985; FRL–6755–5]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–985, must be received on or before January 5, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–985 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: James Tompkins, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–985. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–985 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–985. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. 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 person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. 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. Make sure to submit your comments by the deadline in this notice.

7. 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.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

*Summary of Petition*

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Dow AgroSciences**

*PP 4F4412*

EPA has received a pesticide petition (PP 4F4412) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268–1054 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending the time–limited tolerance for residues of picloram, 4-amino-3,5,6-trichloropicolinic acid and its potassium salt in or on in or on the raw agricultural commodities (RACs) sorghum grain at 0.3 parts per million (ppm), sorghum grain forage at 0.2 ppm, and sorghum stover at 0.5 ppm; and for residues of picloram in or on the RAC aspirated grain fractions at 4 ppm until December 31, 2002. EPA issued a final rule, published in the **Federal Register** of January 5, 1999 (64 FR 418) (FRL–6039–4), which announced that it established a time–limited tolerance for the indirect or inadvertent residues of the herbicide picloram, 4-amino-3,5,6-trichloropicolinic acid and its potassium salt in or on sorghum grain at 0.3 ppm, sorghum grain forage at 0.2 ppm, and sorghum stover at 0.5 ppm; and for residues of picloram in or on the RAC aspirated grain fractions at 4 ppm, with an expiration date of December 31, 2000. A condition of this rule required Dow AgroSciences to submit an aspirated grain residue study before December 31, 1999, which they did on December 9, 1999. The extension of the time–limited tolerances to December 31, 2002 will allow time for review of this additional data and establishment of final tolerances. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The qualitative nature of the residue in plants is understood based on a wheat metabolism study. The residue of concern in wheat forage, straw and grain is conjugated picloram, which is hydrolyzable by acid, base and B-glucosidase. The minor metabolites that were identified in grain and straw were 4-amino-6-hydroxy-3,5-dichloropicolinic acid and 4-amino-2,3,5-trichloropyridine.

2. *Analytical method*. The analytical portions of the magnitude of residue studies were performed at Dow AgroSciences in Midland, MI. The analytical method utilized for the determination of picloram residue levels in the submitted studies was ACR 73.3.S2. There is a practical analytical method for detecting and measuring levels of picloram in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues*

TABLE 1.–SUMMARY OF RESIDUES OF PICLORAM (PPM) FOUND IN GRAIN SORGHUM

| Matrix | Range |
|---|---|
| Grain | ND [a]-0.23 |
| Forage | ND-0.17 |
| Fodder | ND-0.44 |
| Aspirated grain fractions | ND |

[a] ND = less than one–half of the validated lower limit of quantitation of 0.05 µg/g in grain, 0.1 µg/g in forage and fodder, and 0.25 µg/g in aspirated grain fractions.

*B. Toxicological Profile*

1. *Acute toxicity*. Studies for acute toxicity indicate that picloram is classified as category III for acute oral toxicity, category III for acute dermal toxicity, category I/II (depending on whether acid or salts) for acute inhalation toxicity, category IV for skin irritation potential, and category III for eye irritation potential. The potassium salt is classified as a skin sensitizer. In addition, picloram has a low vapor pressure.

Picloram potassium salt has low acute toxicity. The rat oral $LD_{50}$ is 3,536 milligram/kilogram (mg/kg) or greater for males and females. The rabbit dermal $LD_{50}$ is > 2,000 mg/kg and the rat inhalation $LC_{50}$ is > 1.63 milligram/liter (mg/L) air (the highest attainable concentration). Picloram potassium salt is a positive skin sensitizer in guinea pigs but is not a dermal irritant. Technical picloram potassium salt is a moderate ocular irritant but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of picloram have similar low acute toxicity profiles plus low ocular toxicity as well. Therefore, based on the available acute toxicity data, picloram does not pose any acute dietary risks.

2. *Genotoxicty*. Picloram acid was evaluated in the Ames test using *Salmonella typhimurium.* Doses ranged up to 5,000 µ g/plate, with and without metabolic activation. The test substance did not produce a mutagenic response either in the presence or absence of activation.

Picloram acid was evaluated for gene mutation in mammalian cells (HGPRT/CHO). As evaluated up to toxic levels (1,750 gram/milliliter (µg/mL) without metabolic activation; 4,500 µg/mL with metabolic activation), the compound was found to be negative for inducing forward mutation in Chinese hamster ovary (CHO) cells.

Picloram acid was evaluated for cytogenetic effects on bone marrow cells of rats via intra gastric administration at dosage levels of 0 (vehicle), 20, 200 or 2,000 mg/kg. The test material did not produce cytogenetic effects in the study.

Picloram acid was evaluated for genotoxic potential as administered to primary rat hepatocyte cultures at concentrations of 0 (vehicle), 10, 33.3, 100, 333.3 or 1,000 g/mL. The test material was negative for unscheduled DNA synthesis (UDS, a measure of DNA damage/repair) treated up to cytotoxic levels of (1,000 µg/mL).

3. *Reproductive and developmental toxicity*. The HED RfD Peer Review Committee concluded that there was no evidence, based on the available data, that picloram and its salts were associated with significant reproductive or developmental toxicity under the testing conditions.

In the following developmental toxicity studies, the dose levels that appear in parenthesis are picloram acid equivalents where the conversion factor employed was 0.86 as applied to doses of potassium salt.

Picloram potassium salt was administered to New Zealand rabbits by oral gavage at dosage levels of 0, 40, 200, and 400 mg/kg/day (picloram acid equivalents) during days 6 to 18 of gestation. The maternal no observed adverse effect level (NOAEL) is 40 (34) mg/kg/day, where the lowest observed adverse effect level (LOAEL) is 200 (172) mg/kg/day based on reduced maternal weight gain during gestation. The developmental NOAEL is 400 (340) mg/kg/day and the LOAEL was not determined. The potassium salt of picloram was administered to CD rats by gastric intubation at dosage levels of 0, 35 (30), 174 (150) and 347 (298) mg/kg/day during day 6–15 of gestation. The test vehicle was distilled water. There was no evidence of developmental toxicity at doses up to and including the high dose of 347 (298) mg/kg/day. The maternal LOAEL is 347 (298) mg/kg/day based upon excessive salivation in the dams of the high dose group. Hence, the developmental toxicity NOAEL is

greater than or equal to 347 (298) mg/kg/day. The maternal toxicity LOAEL is 347 (298) mg/kg/day and NOAEL is 174 (150) mg/kg/day.

Picloram acid was evaluated in a 2–generation reproduction study in the CD rat. Dosage levels employed were 0, 20, 200 or 1,000 mg/kg/day. The parental LOAEL is 1,000 mg/kg/day based on histopathological lesions in the kidney of males of both generations and some females. In males of both generations, blood in the urine, decreased urine specific gravity, increased absolute and relative kidney weight, and increased body weight gain was observed at the high dose. The parental LOAEL is 1,000 mg/kg/day and the NOAEL is 200 mg/kg/day. The reproductive LOAEL was not identified and the NOAEL is 1,000 mg/kg/day.

4. *Subchronic toxicity.* In a 90–day oral toxicity study, picloram acid was administered via the diet to groups of 15 F344 rats/sex/dose at dosage levels of 0, 15, 50, 150, 300, or 500 mg/kg/day. Based upon liver weight changes and minimal microscopic changes in the liver, the systemic LOAEL is 150 mg/kg/day. The NOAEL is 50 mg/kg/day.

In a 1982 6–month dog dietary study, picloram acid was evaluated at dosage levels of 0, 7, 35 or 175 mg/kg/day. The systemic NOAEL is 35 mg/kg/day and the LOAEL is 175 mg/kg/day based on decreases in body weight gain and food consumption and increases in liver weights (relative), alkaline phosphatase and alanine transaminase. Increased liver to body weight ratios and absolute liver weights were observed in only two males at the 35 mg/kg/day dosage level.

In a 21–day dermal toxicity study, the potassium salt of picloram was administered dermally to groups of five New Zealand white rabbits of each sex at doses of (vehicle control) 0, 75.3, 251, or 753 mg/kg/day (0, 65, 217, or 650 mg/kg/day picloram acid equivalents) for a total of 15 applications over the 21–day period. The NOAEL is greater than or equal to 753 mg/kg/day for both sexes; hence, a LOAEL was not established for either sex. Although the limit dose of 1,000 mg/kg/day was not achieved, practical difficulties precluded administering more test material. The study revealed the non–systemic effects of dermal irritation and very slight to well defined edema and/or erythema in both sexes at all dose levels.

5. *Chronic toxicity.* In a 1988 1–year chronic feeding study in the dog, picloram acid was administered orally via the diet at dosage levels of 0, 7, 35, or 175 mg/kg/day. The LOAEL is 175 mg/kg/day based on increased liver weight (absolute and relative). The NOAEL is 35 mg/kg/day.

In a chronic toxicity/carcinogenicity feeding study conducted in the F344 rat, picloram acid (technical grade 93% containing 197 ppm hexachlorobenzene as an impurity) was evaluated at 0, 20, 60, or 200 mg/kg/day for two years. The chronic toxicity LOAEL was 60 mg/kg/day as evidenced by altered size and tinctorial properties of centrilobular hepatocytes and increased absolute and/or relative liver weights in both sexes. The NOAEL was 20 mg/kg/day. The study was negative for carcinogenicity, but due to concerns that a MTD may not have been achieved and the fact that the test material contained 197 ppm hexachlorobenzene impurity, the study was not considered to fulfill adequately the carcinogenicity testing requirement.

In response to the deficiencies cited in the study above, an additional 2–year dietary chronic/carcinogenicity study was conducted (in 1992) using F344 rats administered picloram acid at dosage levels of 0, 250, or 500 mg/kg/day for 104 weeks. Chronic toxicity was observed at 250 mg/kg/day among males only (increased incidence and severity of glomerulonephritis, blood in urine, decreased specific gravity of urine, increased size of hepatocytes that often had altered staining properties). Among females, there were chronic effects only at 500 mg/kg/day (increased glomerulonephropathy, increased absolute and relative kidney weight). There was no evidence of carcinogenicity in this study. It should be noted that use of the Osborne–Mendel rat was waived due to lack of availability of the strain of rat. In addition, the level of hexachlorobenzene in the test material employed in this study was 12 ppm. These two studies fulfill the guidelines 83–l(a) and 83–2(a) for rats.

In a 1992 2–year dietary carcinogenicity study in B6C3F1 mice, picloram acid was evaluated at doses of 0, 100, 500, or 1,000 mg/kg/day. The systemic NOAEL in this study is 500 mg/kg/day based on a significant increase in absolute and relative kidney weights in males (at the high dose level). No histopathological lesions were found to corroborate these changes. There was no evidence of carcinogenicity.

The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a ''Group E - Evidence of Non–Carcinogenicity for Humans.'' This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee (May 26, 1988).

Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), picloram is classified as Group ''E'' for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a ''Group E - Evidence of Non–Carcinogenicity for Humans.'' This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee May 26, 1988). Thus, a cancer risk assessment would not be appropriate.

Hexachlorobenzene (HCB), a recognized impurity in picloram compounds, is considered to be an animal carcinogen and probable human carcinogen as discussed in the 1988 Registration Standard for picloram. The $Q^*$ is 1.02 (mg/kg/day)–1. The maximum level of HCB in picloram is considered to be 0.005%.

6. *Animal metabolism.* The absorption, distribution, metabolism and excretion of picloram acid was evaluated in female rats administered a single i.v. or oral gavage dose of 10 mg/kg, an oral gavage dose of 1,000 mg/kg $^{14}C$–picloram, or 1 mg/kg/day unlabeled picloram by gavage for 14 days followed by a single oral gavage dose of 10 mg/kg $^{14}C$–picloram on day 15. The study demonstrates that $^{14}C$–picloram is rapidly absorbed, distributed and excreted following oral and i.v. administration. This study alone is not adequate; however, this study is acceptable when considered in conjunction with a male rat metabolism study which yielded similar results.

7. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined. However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that picloram causes endocrine effects.

*C. Aggregate Exposure*

1. *Dietary exposure.*–i. *Food.* For purposes of assessing the potential

dietary exposure under these tolerances, aggregate exposure is estimated based on the TMRC from the existing and future potential tolerances for picloram on food crops. The TMRC is obtained by multiplying the tolerance level residues (existing and proposed) by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting the HED exposure assessment: 100% of the crops were treated, the RAC residues would be at the level of the tolerance, and some refinements were made based on marketing information previously supplied to HED by BEAD. This screening level analysis results in an overestimate of human exposure and a conservative assessment of risk.

The chronic dietary exposure/risk estimates for picloram are extremely low. For the United States population as a whole, the Theoretical Maximum Residue Contribution (TMRC) is 0.0011 mg/kg bw/day, < 1 of the reference dose (RfD). The subgroup with the greatest routine chronic exposure is Non–nursing Infants (Less Than 1–Year Old), which has a TMRC of 0.0042 mg/kg bw/day (2% of the RfD).

There is currently no form of sorghum observed in human consumption surveys utilized by EPA in their dietary risk evaluation model (DRES) assessments. Furthermore, residues of picloram in sorghum do not increase the dietary burden of picloram in animal feeds. Therefore, sorghum tolerances will have no effect on the human dietary consumption of picloram, and the proposed action, as well as existing tolerances, pose no concern with regards to chronic dietary exposure to food residues of picloram.

The estimated carcinogenic dietary risk for HCB as an impurity in picloram only for the U.S. population is 1.5 X10–$^{7}$ which is less than the 1.0 X10–$^{6}$ point below which risk is generally considered to be negligible.

ii. *Drinking water.* An additional potential source of dietary exposure to residues of pesticides are residues in drinking water. The Maximum Contaminant Level for residues of picloram in drinking water has been established at 500 µg/L and a 1–10 day Health Advisory of 20,000 µg/L.

The Agency has published screening methods for estimating chemical residues in both ground water (SCI–GROW2) and surface water (GENEEC). Employing these methods yields the following 56–day Expected Environmental Concentrations (EEC) for a range of application rates:

TABLE 2.–EXPECTED ENVIRONMENTAL CONCENTRATIONS

| Application rate (lb. acidequivalent/acre) and use | SCI–GROW2EEC (µg/L) | GENEECEEC (µg/L) |
|---|---|---|
| 0.023 (wheat, barley,and oats use rate) | 4.4 | 1.2 |
| 1 (maximum broadcastrate in label) | 189 | 51.3 |
| 2(maximum spottreatment rate in label) | 379 | 103.1 |

The 56–day value is an appropriate endpoint to employ for the chronic exposure scenario. Default, conservative inputs were used for the models, as described in July 27, 1998 memorandum from EPA to Dow AgroSciences. Employing these values, a worst–case drinking water risk assessment can be performed as summarized below:

TABLE 3.–DRINKING WATER RISK ASSESSMENT

| Population subgroup[1] | RfD (mg/kg/day) | Food exposure (mg/kg/day) | Maximum water exposure(mg/kg/day)[2] | DWLOC(µg/L)[3] | SCI–GROW$^{2EEC}$ (µg/L) | GENEEC EEC (µg/L) |
|---|---|---|---|---|---|---|
| U.S population | 0.2 | 0.0011 | 0.2 | 7,000 | 379 | 103.1 |
| Females(13–19, not nursing orpregnant) | 0.2 | 0.00090 | 0.2 | 6,000 | 379 | 103.1 |
| Non–Nursing infants(< 1 yr. old) | 0.2 | 0.0043 | 0.2 | 2,000 | 379 | 103.1 |

[1] Population subgroups chosen in EPA memorandum of July/27/98.
[2]=RfD - ARC from DRES (cited above)
[3] Drinking water level of concern, based on default water body weights and water consumption of: 70 kg/2L (adult males), 60 kg/2L (adult female), 10 kg/1L (infant).

This tables shows that for even the most highly exposed population, exposure from water is below HED's DWLOC for chronic dietary exposure. Further refinement is also possible based on monitoring data. Monitoring data available from the Pesticides in Ground Water Data base indicate that picloram has been detected in ground water at concentrations ranging up to 30 µg/L. Results reported in this database typically were focused on highly vulnerable areas and, in many cases, the database reports information from poorly constructed or damaged wells. These wells are at high risk because of the potential for surface residues to be carried directly down the casing into the ground water. Recognizing these high risk situations, an analysis of this database shows that less than 3% of the wells sampled were found to contain picloram. No distinction has been made between point and non point sources of material. Many of the detections are known to be related to point source contamination including spills at mixing/loading sites, near wells and back siphoning events. Of the detections which may have resulted from non–point sources, none are documented to occur on sites where application would be recommended based on current labeling. Nearly 99% of the ground water detections are at levels of less than 1% of the Maximum Contaminant Level (*i.e.,* <5 µg/L) established for human consumption by the EPA Office of Drinking Water. The STORET data base maintained by the USEPA Office of Drinking Water indicates that picloram has been reported in surface water

samples before 1988. Of these detections, 85% were at concentrations 0.13 μg/L or lower and the maximum was 4.6 μg/L. The maximum concentration reported was 4.6 μg/L. Comparing these values to the DWLOC shows an even greater degree of protection for all of the population subgroups.

HCB contamination of ground water resources is relatively unlikely due to its high binding potential. Based on monitoring data and fate properties it is unlikely that long term HCB concentrations in surface water would exceed 10 ppt. Therefore, exposure from water is below EPA's drinking water level of concern of 34 ppt for chronic dietary exposure to HCB for the U.S. population.

In summary, these data on potential water exposure indicate insignificant additional dietary intake and risk for picloram.

2. *Non–dietary exposure*. This is a restricted use chemical that has no residential uses at this time; therefore, there are no human risks associated with residential uses. Entry into a treated area soon after the application of picloram is expected to be rare given the cultural practices typically associated with the use sites (rights–of–way, forestry, pastures, range lands, and small grains) defined by the picloram labels at this time. Furthermore, if entry should occur, the potential exposures are expected to be minimal due to the characteristics of those use–sites.

*D. Cumulative Effects*

The potential for cumulative effects of picloram and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of picloram is well defined. However, the biochemical mechanism of toxicity of this compound is not well known. No reliable information exists to indicate that toxic effects produced by picloram would be cumulative with those of any other chemical compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of picloram are considered in the aggregate exposure assessment.

*E. Safety Determination*

1. *U.S. population*. In the meeting of September 30, 1993, the OPP RfD Peer Review Committee recommended that the RfD for this chemical be based on a NOAEL of 20 mg/kg/day for a dose–related increase in size and altered tinctorial properties of centrilobular hepatocytes in males and females at 60 and 200 mg/kg/day in a chronic toxicity study in rats. An uncertainty factor (UF) of 100 was used to account for the inter–species extrapolation and intra–species variability. On this basis, the RfD was calculated to be 0.20 mg/kg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.001845 mg/kg/day. Existing tolerances utilize < 1% of the RfD. It should be noted that no regulatory value has been established for this chemical by the World Health Organization (WHO) up to this date. The committee classified picloram as a ''Group E'' chemical, no evidence of carcinogenicity for humans.

Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to picloram will utilize approximately 1% of the RfD for the U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to picloram residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of picloram, data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (i) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (ii) data on systemic toxicity.

Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOAEL of > 298 mg/kg/day and a maternal toxicity NOAEL of 280 mg/kg/day. A study in rabbits resulted in a maternal NOAEL of 34 mg/kg/day and a developmental NOAEL of 344 mg/kg/day. Based on all of the data for picloram, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

In a 2–generation reproduction study in rats, the NOAEL for parental systemic toxicity is 200 mg/kg/day. There was no effect on reproductive parameters at 1,000 mg/kg/day, nor was there an adverse effect on the morphology, growth or viability of the offspring. Thus, the reproductive NOAEL is 1,000 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre–natal and post–natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to pre–natal and post–natal effects for children is complete. Therefore, it is concluded that an additional UF is not warranted and that the RfD at 0.2 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumption previously described, it is concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of picloram will be less than 4% of the RfD for all populations and subgroups. Since this estimate represents the ''worst case'' exposure for a given population (Non–nursing infants, < 1 year old), exposures will be less for all other sub–populations, e.g., children, 1–6 years. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to picloram residues.

*F. International Tolerances*

There are no Codex maximum residue levels established for residues of picloram.

[FR Doc. 00–31057 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[PF–984; FRL–6755–4]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–984, must be received on or before January 5, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed

instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–984 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–984. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–984 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–984. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. 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 person identified under **FOR FURTHER INFORMATION CONTACT.**

### *E. 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. Make sure to submit your comments by the deadline in this notice.
7. 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.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities

under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

*Summary of Petitions*

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

*Interregional Research Project Number 4*

*9E6063 and 7E4865*

EPA has received pesticide petitions (9E6063 and 7E4865) from Interregional Research Project Number 4, Technology Centre of New Jersey, 681 U.S. Highway # 1 South, North Brunswick, NJ, 08902-3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of clomazone in or on the raw agricultural commodities (RAC) tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group at 0.05 parts per million (ppm). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of clomazone in plants is adequately understood.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of clomazone in or on tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group, with a limit of detection that allows monitoring of food for residues at or above the levels proposed in this tolerance. Samples are analyzed using an analytical method consisting of an acid reflux, a $C_{18}$ solid phase extraction (SPE), a Florisil SPE clean–up followed by gas chromatography (GC)-mass selective detection (MSD). The method limit of quantitation (LOQ) is 0.05 ppm. The method limit of detection (LOD) is 0.01 ppm.

3. *Magnitude of residues*. The representative commodity for the tuberous and corm vegetable (except potato) subgroup, is sweet potato. IR-4 has previously submitted residue data for clomazone use on sweet potato (MRID # 40572701). Four field trials, with two different applications timings were conducted. No clomazone residues were found above the LOQ (0.05 ppm) in any of the treated samples. FMC Corporation submitted additional data for clomazone on sweet potatoes (MRID # 44441405).

*B. Toxicological Profile*

1. *Acute toxicity*. The following mammalian toxicity studies have been conducted with clomazone technical (unless noted otherwise) to support registrations and/or tolerances of clomazone:

i. A rat acute oral study with an lethal dose $(LD)_{50}$ of 2,077 mg/kg (male) and 1,369 mg/kg (female).

ii. A rabbit acute dermal lethal concentration $(LC)_{50}$ of > 2,000 mg/kg.

iii. A rat acute inhalation $LC_{50}$ of 6.25 mg/L/4 hrs. (male), 4.23 mg/L/hrs. (female) and 4.85 mg/L/4 hrs. (combined sexes).

iv. A primary eye irritation study in the rabbit which showed practically no irritation.

v. A primary dermal irritation study in the rabbit which showed minimal irritation.

vi. A primary dermal sensitization study in the guinea pig which showed no sensitization.

vii. Acute delayed neurotoxicity – clomazone, and its known metabolites, are not structurally related to known neurotoxic substances.

2. *Genotoxicity*. The following genotoxicity tests were all negative: Ames Assay; CHO/HGPRT Mutation Assay; and Structural Chromosomal Aberration. The Unscheduled DNA Synthesis genotoxicity was negative with activation; weakly positive without activation.

3. *Reproductive and developmental toxicity*. A 2–generation reproduction study was conducted in the rat with a parental systemic no observed adverse effect level (NOAEL) of 1,000 ppm (50 mg/kg/day) based on decreased body weight and food consumption at 2,000 ppm; and a progeny systemic NOAEL of 1,000 ppm (50 mg/kg/day) based on decreased pup body weight at 2,000 ppm. The reproductive performance NOAEL was > 4,000 ppm which was the highest dose tested (HDT). There was an unexplained decrease in the fertility index during mating of the F1b generation at 4,000 ppm which was not observed in the F1a litter or repeated in the F2 generation. Additionally, there was one F2a pup at 1,000 ppm which had non–functional hindlimbs and one F2b pup at 4,000 ppm which had extended hindlimbs with no flexion at the ankle. These limb abnormalities were not considered treatment–related for the following reasons (i) there was no dose response observed, (ii) the findings were not statistically significant, (iii) the findings were not repeated at the 1,000 ppm dose level in the F2b litter or found in the F1a or F1b litters, and (iv) these findings or related hindlimb abnormalities were not observed in developmental studies at gavage dose levels up to 100 mg/kg/day in the rat or 240 mg/kg/day in the rabbit.

A developmental toxicity study in rats given gavage doses of 100, 300 and 600 mg/kg/day and with maternal and fetal NOAELs of 100 mg/kg/day. The maternal NOAEL is based on decreased locomotion, genital staining and runny eyes and the developmental NOAEL is based on increased incidence of delayed ossification at 300 mg/kg/day. This study was negative for developmental at all doses tested.

A developmental toxicity study in rabbits given gavage doses of 30, 240 and 700 mg/kg/day with maternal and fetal NOAELs of 240 mg/kg/day. The maternal NOAEL is based on a decrease in body weight and the developmental NOAEL is based on an increase in the number of fetal resorptions at 700 mg/kg/day. This study was negative for teratogenicity at all doses tested.

In all cases, the reproductive and developmental NOAELs were equal to the parental NOAELs, thus indicating that clomazone does not pose any increased risk to infants or children.

4. *Subchronic toxicity*. In a 90–day feeding subchronic study in mice the

NOAEL was 20 ppm (< 2.9 mg/kg/day)based on liver cytomegaly at 20 ppm.

5. *Chronic toxicity*. A 12–month feeding study in the dog with a NOAEL of 500 ppm (14.0 mg/kg/day for males; 14.9 mg/kg/day for females) based on increased blood cholesterol and liver weights at 2,500 ppm.

A 24–month chronic feeding/carcinogenicity study in the rat with a NOAEL of 100 ppm (4.3 mg/kg/day for males; 5.5 mg/kg/day for females) based on increased liver weights and increased liver cytomegaly at 500 ppm. There were no carcinogenic effects observed under the conditions of the study.

A 24–month chronic feeding/carcinogenicity study in the mouse with a NOAEL of 100 ppm (15 mg/kg/day) based on an increase in the white blood cell count. There were no carcinogenic effects observed under the conditions of the study.

Using the Guidelines for Carcinogen Risk Assessment, it is proposed that clomazone be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in rats and mice.

The reference dose (RfD) for clomazone has been established at 0.043 mg/kg/day. The RfD for clomazone is based on the 24–Month Feeding/Carcinogenicity Study in the Rat with a NOAEL of 4.3 mg/kg/day and an uncertainty factor of 100.

6. *Animal metabolism*. The metabolism of clomazone in animals is adequately understood. Clomazone degrades rapidly and extensively in rats, goats and poultry to a variety of metabolites which were readily excreted from the body via excreta.

7. *Metabolite toxicology*. No clomazone related metabolite residues have been identified as being of toxicological concern. The residue of significance is parent.

8. *Endocrine disruption*. No specific tests have been conducted with clomazone to determine whether the herbicide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. It should be noted, however, that the chemistry of clomazone is unrelated to that of any compound previously identified as having estrogen or other endocrine effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food* For purposes of assessing the potential dietary exposure, EPA has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the established tolerances for clomazone. The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels. Dietary exposure to residues of clomazone in or on food will be limited to residues on cabbage (0.1 ppm), cottonseed (0.05 ppm), cucurbit vegetables (0.05 ppm), succulent peas (0.05 ppm), peppers (0.05 ppm), soybeans (0.05 ppm), sweet potato (0.05 ppm), snap beans (0.05 ppm) rice (0.05 ppm), sugar (from cane) (0.05 ppm) and residues on tuberous and corm vegetable (except potato) (0.05 ppm each). As noted above, this exposure assessment is based on very conservative assumptions, i.e., 100% of crops treated will contain clomazone residues and those residues would be at the level of the tolerance. It is FMC's opinion that these assumptions result in an overestimate of human exposure.

ii. *Drinking water*. It is unlikely that there will be exposure to residues of clomazone through drinking water supplies. A field mobility study was conducted at a loamy sand location. Clomazone was found only in the top 0-1 ft. soil samples during the 61 day study period. No clomazone residue (< 0.02 ppm) was detected in the deeper soil levels (1-2, 2-3 and 3-4 ft.). Detectable residues of clomazone were found only in the 0-6 horizon. Should movement into surface water occur, potential for clomazone residues to be detected in drinking water supplies at significant levels is minimal. Accordingly, there is no reasonable expectation that there would be an additional incremental aggregate dietary contribution of clomazone through groundwater or surface water.

2. *Non–dietary exposure*. Clomazone is only registered for use on food crops. Since the proposed use on the tuberous and corm vegetable (except potato) crop subgoup and cucurbit vegetable crop group is consistent with existing registrations, there will be no non–dietary, non–occupational exposure.

*D. Cumulative Effects*

Clomazone is an isoxazolidinone herbicide. No other registered chemical exists in this class of chemistry. Therefore, given clomazone's unique chemistry low acute toxicity, the absence of genotoxic, oncogenic, developmental or reproductive effects, and low exposure potential (see Sections A and C), the expression of cumulative human health effects with clomazone and other natural or synthetic pesticides is not anticipated.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicology data, it is concluded that aggregate exposure due to existing registered uses, and pending uses, of clomazone will utilize less than 1% of the RfD for the U.S. population. Additionally, an analysis concluded that aggregate exposure to clomazone adding use on cucurbit vegetable crop group and tuberous and corm vegetable (except potato) crop subgroup at a 0.05 ppm will utilize a negligible (i.e., 0.011% or less for cucurbits and 0.002% or less for these root crops) percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of clomazone, including all anticipated dietary exposure.

2. *Infants and children*. Based on the current toxicological data requirements, the data base relative to prenata and postnatal effects for children is complete (See Section B.3). Further, for clomazone, the NOAEL in the two year feeding study which was used to calculate the RfD (0.043 mg/kg/day) is already lower than the NOAELs from the reproductive and developmental studies by a factor of more than 10-fold. Therefore, it can be concluded that no additional uncertainty factors are warranted and that the RfD at 0.043 mg/kg/day is appropriate for assessing aggregate risk to infants and children as well as adults.

Using the conservative exposure assumptions described above, FMC has concluded that < 1% of the RfD will be utilized by aggregate exposure to residues of clomazone in/on tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group for non–nursing infants (< 1 year old), the population subgroup most sensitive.

Based on the above information, FMC has concluded that there is a reasonable

certainty that no harm will result to infants, children or adults from dietary food consumption exposure to clomazone residues from tuberous and corm vegetable (except potato) crop subgroup and cucurbit vegetable crop group plus all other clomazone treated human dietary food sources.

*F. International Tolerances*

There are Codex residue limits for residues of clomazone in or on oilseed rape, potatoes, tobacco, soybeans, rice, cottonseed, sugarcane and peas.

[FR Doc. 00–31058 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–983; FRL–6573–7]**

## Notice of Filing Pesticide Petitions to Establish and to Extend Tolerances for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–983, must be received on or before January 5, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–983 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** For Pesticide Petition (PP 9F5079) contact: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; Telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

For Pesticide Petitions (PP 8F3654 8F3674) contact: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460; Telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *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/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–983. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–983 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–983. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. 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 person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. 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. Make sure to submit your comments by the deadline in this notice.
7. 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.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

## Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required bysection 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### 1. ISK Biosciences Corporation (PP 9F5079)

*Summary of Petition*

EPA has received a pesticide petition (PP 9F5079) from ISK Biosciences Corporation, 5970 Heisley Road, Suite 200, Mentor, Ohio, 44060, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fluazinam in or on the raw agricultural commodities potato and peanut at 0.02 parts per million (ppm) and wine grapes at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The residue of concern is best defined as the parent, fluazinam. The metabolism of fluazinam in plants (potatoes, peanuts, and wine grapes) is adequately understood for the purposes of these tolerances. The metabolism of fluazinam involves initial reduction of the nitro groups, hydrolysis of the trifluoromethyl group as well as replacement of chlorine by glutathione with subsequent reactions along the glutathione pathway. Parent fluazinam is rapidly degraded and is either not found or barely detectable in peanuts and potatoes. Fluazinam parent was the major identifiable residue in a grape metabolism study. Identifiable residues in plant metabolism studies either closely resemble fluazinam in structure or are the result of re-incorporation of the fluazinam carbon pool into natural products.

Ruminant and poultry metabolism studies demonstrated that the transmittal of residues from the feed of goats and hens through to meat, milk, and eggs was low. Total 14C residues were below 1 ppm in all tissues, milk and eggs. Identifiable residues were less than 2% of the administered dose in all matrices, except for chicken fat and liver.

2. *Analytical method.* An analytical method using gas chromatography with electron capture detection (GC-ECD) for the determination of fluazinam residues on potatoes, peanuts, grapes and the processing fractions thereof has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification using column chromatography. The method has been successfully validated by an independent laboratory using peanut nutmeat as the matrix. The limit of quantitation of the method is 0.02 ppm in peanuts and 0.01 ppm in potatoes and grapes.

3. *Magnitude of residues*—i. *Potatoes.* Data from 11 field trials in potatoes showed that mean fluazinam residues from duplicate samples were <0.01 ppm in the RAC commodity at all locations. The result of a processing study using a 3.5X application rate showed no concentration into the processing fractions dry peels, french fries and chips. A calculated processing factor of 2.4 for the animal feed commodity wet peels was determined based on residue levels just slightly above the limit of quantitation.

ii. *Peanuts.* A total of 15 field trials were conducted over three growing seasons at nine sites representative of peanut production. Residues of fluazinam in nutmeat from all location were below 0.01 ppm. Residues in peanut hay, a grazing restriction commodity, ranged from 0.16 to 10.2 ppm in the six locations where it was harvested. In a processing study, residues concentrated 3x in crude oil and 5x in soapstock, but did not concentrate in refined oil or presscake.

iii. *Wine grapes.* A total of 20 field trials were conducted over three growing seasons in major wine grape growing regions worldwide. Residues of fluazinam in grapes ranged from 0.03 to 2.27 ppm. Vinification of grapes from two locations showed a reduction of fluazinam in wine to non-detectable levels.

iv. *Secondary residues.* Since levels of fluazinam in potatoes and peanut nutmeat were below detectable levels

(the fluazinam label includes a peanut hay grazing restriction, and only wine grapes which are imported are included in this tolerance petition), no residues of concern are expected on animal feed items. Furthermore, since animal metabolism studies do not show potential for significant residue transfer, detectable secondary residues in animal tissues, milk or eggs are not expected. Therefore, tolerances are not needed for these commodities.

*B. Toxicological Profile*

1. *Acute toxicity.* A battery of acute toxicity studies was conducted which placed technical fluazinam in Toxicity Category III for oral $LD_{50}$, dermal $LD_{50}$, dermal irritation, Category II for inhalation $LC_{50}$ and Category I for eye irritation. Technical fluazinam showed potential for dermal sensitization.

In an acute neurotoxicity study, the no observed affect effect level (NOAEL) for neurotoxicity was 2,000 milligram/kilogram (mg/kg) highest dose tested (HDT) and the NOAEL for systemic effects was 50 mg/kg.

2. *Genotoxicty.* A battery of tests has been conducted to assess the genotoxic potential of technical fluazinam. Assays conducted included two gene mutation tests in bacteria, a chromosomal aberration test in mammalian cells, a mouse micronucleus test and a DNA repair test in bacteria. Technical fluazinam did not elicit a genotoxic response in any of the studies conducted.

3. *Reproductive and developmental toxicity.* In a 2–generation reproductive toxicity study, the NOAEL for reproductive effects was 100 ppm (10.1 mg/kg/day). The NOAEL for parental toxicity was 20 ppm (2.1 mg/kg/day).

In a rat developmental study, there were no developmental effects observed at non-maternally toxic doses. The developmental NOAEL was 50 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 250 mg/kg/day, based upon statistically significant decreased mean fetal body weight and other evidence suggestive of delayed fetal development related to maternal toxicity. The maternal NOAEL was shown to be 50 mg/kg/day.

In a rabbit developmental study, there were no developmental effects observed at non-maternally toxic doses. The developmental NOAEL was 7 mg/kg/day and the LOAEL was 12 mg/kg/day, based on increased incidence of total litter loss and possible slightly increased incidences of fetal findings at this dose. It was concluded that the maternal NOAEL was 4 mg/kg/day.

4. *Subchronic toxicity.* The NOAEL for the 13 week feeding study in rats was 50 ppm (4.1 mg/kg/day). The LOAEL was 500 ppm (41 mg/kg/day), based on periacinar hepatocellular hypertrophy and sinusoidal chronic inflammation in males, increased liver weights in males and increased lung weights in females.

In a 13 week dog study, the NOAEL was 10 mg/kg/day. The LOAEL was 100 mg/kg/day, based on ocular change observed ophthalmoscopically and liver effects consisting of increased relative liver to body weight, bile duct hyperplasia with or without cholangiofibrosis and increased plasma phosphatase levels.

In a 21 day dermal study, the NOAEL for systemic effects was 10 mg/kg/day. The LOAEL was 100 mg/kg/day, based on hepatocelluar hypertrophy and increases in AST and cholesterol levels.

In a subchronic neurotoxicity study, no effects considered to be indicative of neurotoxicity were observed at the highest dose tested, 3,000 ppm (233 mg/kg/day). The NOAEL for systemic toxicity (body weight differences) was 1,000 ppm (74 mg/kg/day).

5. *Chronic toxicity.* Fluazinam was not carcinogenic in rats. A NOAEL of 10 ppm (0.43 mg/kg/day) of fluazinam was established based on the following effects at 1,000 and/or 100 ppm: lower food consumption and efficiency of food utilization, slight anemia, elevated cholesterol, increased liver weights, an increased number of macroscopic liver and testes lesions and an increased incidence of microscopically observed lung, liver, pancreas, lymph node and testes lesions.

An additional study was conducted to further define the NOAEL for long-term effects in the rat. In the second study, a NOAEL of 50 ppm (2.2 mg/kg/day) was established based on liver and testes effects.

Two long-term feeding studies were conducted in mice. In the first, the NOAEL for all effects was 10 ppm (1.14 mg/kg/day) and the LOAEL was 100 ppm (11.2 mg/kg/day) based on the treatment-related effects observed in the liver.

A second oncogenicity study in mice was conducted at 1,000, 3,000 and 7,000 ppm to ensure that an maximum tolerance dose (MTD) was studied. Findings included increased female mortality, reduced body weight gains, increased brain weights and/or liver weights. An impurity in the test material used in this study resulted in vacuolation of the white matter of the brain and cervical spinal cord in treated animals. A statistically significant higher incidence of hepatocellular adenomas was observed in the 3,000 ppm dose males. Hepatocellular adenomas are common tumors in male mice. There was no dose relationship in the induction of the adenoma and no increase in hepatocellular carcinomas. It was concluded that fluazinam is not carcinogenic in the mouse.

In a chronic dog study, the NOAEL was determined to be 1 mg/kg/day. The LOAEL was 10 mg/kg/day based on generalized, nonspecific toxicity. No ocular effects were observed ophthalmoscopally at any dose in this study.

6. *Animal metabolism.* After an oral dose of fluazinam the median peak time for blood concentration of radiolabel activity for both sexes was 6 hours. The major route of excretion was the feces with urine contributing as a minor route. Less than 1% of the administered dose was found in the terminated animals. The highest concentration was found in the liver. There were no major differences related to sex or dose level in the findings. It was concluded that fluazinam is metabolized by both reduction and glutathione and glucuronide conjugation and further metabolism.

7. *Metabolite toxicology.* The same metabolic processes occur in plants and animals but metabolism in plants is more extensive than in animals. All of the major identified metabolites in both plants and animals retain the phenylpyridinylamine structure. Many of the metabolites resulting from fluazinam are similar in plants and animals and, therefore, have already been evaluated toxicologically.

Because of the rapid and complete elimination (in animals) and re-incorporation (in plants) of fluazinam, the toxicity of metabolites is expected to be similar to but lower than the toxicity of the parent compound. The residue of concern is parent fluazinam only.

8. *Endocrine disruption.* The toxicological profile of fluazinam shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen in mammalian chronic studies or in mammalian or avian reproduction studies. It is therefore considered that there is an adequate level of safety over the reference dose for possible endocrine effects and that an additional safety factor for possible endocrine effects is not warranted.

*C. Aggregate Exposure*

1. *Dietary exposure.* An RfD of 0.01 mg/kg/day is proposed for humans, based on the NOAEL from the one year dog study (1 mg/kg/day) and dividing by an uncertainty factor of 100.

i. *Food—a. Acute risk.* Tier 1 acute dietary exposure analyses were

conducted for fluazinam in/on peanuts, potatoes and imported wine grapes to determine the exposure contribution of these commodities to the diet and to ascertain the acute risk potential. The estimates were based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated, and consumption data from the 1994 through 1996 USDA continuing survey of food intake.

Even using all of the worst case exposure scenarios listed above, the Tier 1 acute assessment for the U.S. population resulted in a margin of safety (MOS) of 270,507 at the 95th percentile. This corresponded to an estimated exposure of 0.000185 mg/kg/day. The highest acute exposure estimate (95th percentile) was observed in the seniors (55 years and over) subpopulation: 0.001285 mg/kg/day. This correlates to an MOE of 38,908.

*b. Chronic risk.* Tier 1 dietary exposure analyses were conducted for fluazinam in/on peanuts, potatoes and imported wine grapes to determine the exposure contribution of these commodities to the diet and to ascertain the chronic risk potential. The estimates were based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated, and consumption data from the 1994 through 1996 USDA continuing survey of food intake.

Even using all of the worst case exposure scenarios listed above, the Tier 1 chronic dietary exposure estimates resulted in an estimated exposure for the U.S. population of 0.000104 mg/kg/day. This exposure corresponds to 1.0% of the reference dose (RfD) of 0.01mg/kg/day. The highest exposure estimate was calculated for the Females 20+ years (non-pregnant/non-nursing) population subgroup. This exposure was determined to be 0.000156 mg/kg/day (1.6% of the RfD).

It can be concluded that acute or long-term dietary exposure to fluazinam through residues on treated peanuts, potatoes and imported wine grapes should not be of cause for concern.

ii. *Drinking water.* Since fluazinam is intended for application outdoors to field grown peanut and potato crops, the potential exists for parent and or metabolites to reach ground or surface water that may be used for drinking water. The calculated drinking water levels of concern (DWLOC) for chronic exposure for adult males, adult females and toddlers were estimated to be 355 parts per billion (ppb), 296 ppb, and 149 ppb, respectively. The calculated DWLOCs for acute exposure for all adults, adult females and toddlers were estimated to be 17,943 ppb, 14,993 ppb, and 7,497 ppb, respectively. The chronic and acute DWLOC values are well above the modeled chronic and acute DWECs of 0.17 ppb (GENEEC 56–day/3) and 15.1 ppb (GENEEC instantaneous value), respectively. Therefore, there is comfortable certainty that no harm will result from combined dietary (food and water) exposure due to the use of fluazinam on peanuts, potatoes and imported wine grapes.

2. *Non-dietary exposure.* No petition for registration of fluazinam is being made for either indoor or outdoor residential use. Non-occupational exposure of fluazinam to the general population is therefore not expected and is not considered in aggregate exposure estimates.

*D. Cumulative Effects*

Fluazinam is a phenylpyridinylamine fungicide. Since there are no other members of this class of fungicides, it is considered unlikely that fluazinam would have a common mechanism of toxicity with any other pesticide in use at this time.

*E. Safety Determination*

1. *U.S. population.* Based on a NOAEL of 1 mg/kg bwt/day from a one year feeding study in dogs, and using an uncertainty factor of 100, a reference dose of 0.01 mg/kg bwt/day is proposed for assessment of long-term risk. The estimate of dietary intake was based on proposed tolerance level residues for all three crops, peanut and potato processing studies, market share assumptions of 100% crop treated and consumption data. Even using those conservative intake estimates, the proposed tolerances will utilize only 1% of the RfD for the U.S. population. The estimated exposure of fluazinam from drinking water, 0.17 ppb is at least three orders of magnitude below the calculated drinking water level of concern, 355 ppb.

2. *Infants and children.* Data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study were considered. These studies which were described earlier, demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to fluazinam. In addition, the multigeneration reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. For all three studies, parental NOAELs were lower than or equivalent to the developmental or offspring NOAELs. It is concluded that the standard margin of safety will protect the safety of infants and children and that an additional safety factor is not warranted.

The dietary exposure of fluazinam to infants and children is estimated to be much lower than adults because 80% to 90% of the exposure is expected from sherry and wine. The proposed tolerances will utilize <0.5% of the RfD for infants and children. The estimated exposure of fluazinam from drinking water, 0.17 ppb is three orders of magnitude below the calculated drinking water level of concern, 149 ppb.

*F. International Tolerances*

There are presently no Codex maximum residue levels established for residues of fluazinam on any crop.

**2. Novartis Crop Protection, Inc.,**

*Summary of Petitions:*

EPA has received two pesticide petitions (PP 8F3654, PP 8F3674) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing,pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending the expiration date for tolerances for residues of propiconazole in or on the raw agricultural commodities corn, field, stover (12.0 parts per million (ppm)); corn, field, forage (12.0 ppm); corn, field, grain (0.1 ppm); corn, sweet (0.1 ppm); pineapple (0.1 ppm); pineapple, fodder (0.1 ppm) (PP 8F3674); peanut (0.2 ppm); peanut, hay (20 ppm); and peanut, hulls (1.0 ppm) (PP 8F3654). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however,EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* Novartis believes the studies supporting propiconazole adequately characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of propiconazole and its metabolites which contain the 2,4-dichlorobenzoic acid (DCBA) moiety.

2. *Analytical method.* Novartis has submitted a practical analytical method involving extraction, filtration, conversion, partition, derivitization, and solid phase cleanup with analysis by confirmatory gas chromatography using electron capture detection (ECD). The total residue method is used for

determination of propiconazole and its metabolites. The limit of quantitation (LOQ) for the method is 0.05 ppm.

3. *Magnitude of residues*. Field residue trials have been conducted at various rates, timing intervals, and applications methods to represent the use patterns which would most likely result in the highest residues. For all samples, the total residue method was used for determination of the combined residues of parent and its metabolites which contain the DCBA moiety.

*B. Toxicological Profile*

1. *Acute toxicity*. Propiconazole exhibits low toxicity. Data indicated the following: a rat acute oral $LD_{50}$ of 1,517 milligrams/kilograms (mg/kg); a rabbit acute dermal $LD_{50}$ > 6,000 mg/kg; a rat inhalation $LC_{50}$ >5.8 g/liter air; minimal skin and slight eye irritation; and nonsensitization.

2. *Genotoxicty*. Propiconazole exhibits no mutagenic potential based on the following data: *In vitro gene* mutation test (Ames assay, rat hepatocyte DNA repair test, (human fibroblast DNA repair test), *In vitro* chromosome test, (human lymphocyte cytogenetic test), *In vivo* mutagenicity test, (Chinese hamster bone marrow cell nucleus anomaly test, Chinese hamster bone marrow cell micronucleus test, mouse dominant lethal test), and other mutagenicity test (BALB/3T3 cell transformation assay).

3. *Reproductive and developmental toxicity*. In an oral teratology study in the rabbit, a maternal no observed adverse effect level (NOAEL) of 30 mg/kg was based on reduced food intake but without any fetotoxicity even at the top dose of 180 mg/kg. In an oral teratology study in the rabbit, a maternal NOAEL of 100 mg/kg was based on reductions in body weight gain and food consumption and a fetal NOAEL of 250 mg/kg was based on increased skeletal variations at 400 mg/kg. In an oral teratology study in the rat, a maternal and fetal NOAEL of 100 mg/kg was based on decreased survival, body weight gain, and food consumption in the dams and delayed ossification in the fetuses at 300 mg/kg. In a second teratology study in the rat, a maternal and fetal NOAEL of 30 mg/kg was based on reductions in body weight gain and food consumption in the dams and delayed development in the fetuses at 90 and 360/300 mg/kg. A supplemental teratology study in the rat involving eight times as many animals per group as usually required showed no teratogenic potential for the compound. A 2-generation reproduction study in the rat showed excessive toxicity at 5,000 ppm without any teratogenic effects. A 2-generation reproduction study in the rat showed no effects on reproductive or fetal parameters at any dose level. Postnatal growth and survival were affected at the top dose of 2,500 ppm, and parental toxicity was also evident. The NOAEL for development toxicity is 500 ppm.

4. *Subchronic toxicity*. In a 21 day dermal study in the rabbit, a NOAEL of 200 mg/kg was based on clinical signs of systemic toxicity. In a 28 day oral toxicity study in the rat, a NOAEL of 50 mg/kg was based on increased liver weight. In a subchronic feeding study in the mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 13 week feeding study in the male mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 90 day feeding study in rats, the NOAEL was 240 ppm (24 mg/kg) based on a reduction in body weight gain. In a 90 day feeding study in dogs,the NOAEL was 250 ppm (6.25 mg/kg) based on reduced food intake and stomach histologic changes.

5. *Chronic toxicity*. In a 12 month feeding study in the dog, a NOAEL of 50 ppm (1.25 mg/kg) was based on stomach histologic changes. In a 24 month oncogenicity feeding study in the mouse, the NOAEL was 100 ppm (15 mg/kg). The MTD was exceeded at 2,500 ppm in males based on decreased survival and body weight. Increased incidence of liver tumor was seen in these males but no evidence of carcinogenicity was seen at the next lower dose of 500 ppm in either sex. In a 24 month chronic feeding/oncogenicity study in the rat, a NOAEL of 100 ppm (5 mg/kg) was based on body weight and blood chemistry. The MTD was 2,500 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen. Based on the available chronic toxicity data, Novartis believes the Reference dose (RfD) for propiconazole is 0.0125 mg/kg/day. This RfD is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as stomach mucous hyperemia was the most sensitive indicator of toxicity in that study.

Using the Guidelines for Carcinogenic Risk Assessment published on September 24, 1986 (51 FR 33992), the USEPA has classified propiconazole in group C for carcinogenicity (evidence of possible carcinogenicity for humans). The compound was tested in 24 month studies with both rats and mice. The only evidence of carcinogenicity was an increase in liver tumor incidence in male mice at a dose level that exceeded the maximum tolerated dose (MTD). Dosage levels in the rat study were appropriate for identifying a cancer risk. The Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

*C. Aggregate Exposure*

1. *Dietary exposure*. The RfD for propiconazole is 0.0125 mg/kg/day and is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100.

i. *Food—Acute risk*. The risk from acute dietary exposure to propiconazole is considered to be very low. The lowest NOAEL in a short term exposure scenario, identified as 30 mg/kg in the rat teratology study, is 24-fold higher than the chronic NOAEL. Based on worst-case assumptions, the chronic exposure assessment did not result in any margin of exposure (MOE) less than 150 for even the most impacted population subgroup. Novartis believes that the MOE for acute exposure would be more than 100 for any population groups; MOE of 100 or more are considered satisfactory.

ii. *Chronic risk*. For the purposes of assessing the potential dietary exposure under the existing, pending, and proposed tolerances for the residue of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC). The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels, resulting in an overestimation of human exposure.

Currently established tolerances range from 0.05 ppm in milk to 60 ppm in grass seed screenings and include: apricots (1.0 ppm); bananas (0.2 ppm); barley grain (0.1 ppm); barley straw (1.5 ppm); cattle kidney and liver (2.0 ppm); cattle meat, fat, and meat by products except kidney and liver (0.1 ppm); celery (5.0 ppm); corn forage and fodder (12.0 ppm); corn grain and sweet (0.1); eggs (0.1 ppm); goat kidney and liver (2.0 ppm); goat meat, fat, and meat by products except kidney and liver (0.1 ppm); grass forage (0.5 ppm); grass hay/straw (40.0 ppm); grass seed screenings (60.0 ppm); hogs kidney and liver (2.0 ppm); hog meat, fat, and meat by products except kidney and liver (0.1 ppm); horses kidney and liver (2.0 ppm); horse meat, fat, and meat by

products except kidney and liver (0.1 ppm); milk (0.05 ppm); mint tops (0.3 ppm - regional tolerance west of Cascade Mountains); mushrooms (0.1 ppm); nectarines (1.0 ppm); oat forage (10.0 ppm); oat grain (0.1 ppm); oat hay (30.0 ppm); oat straw (1.0 ppm); peaches (1.0 ppm); peanut hay (20.0 ppm); peanut hulls (1.0 ppm); peanuts (0.2 ppm);, pecans (0.1 ppm); pineapple (0.1 ppm); pineapple fodder (0.1 ppm); plums (1.0 ppm); poultry liver and kidney (0.2 ppm); poultry meat, fat, and meat by products except kidney and liver (0.1 ppm); prunes, fresh (1.0 ppm); rice grain (0.1 ppm); rice straw (3.0 ppm); wild rice (0.5 ppm regional tolerance Minnesota); rye grain (0.1 ppm); rye straw (1.5 ppm); sheep kidney and liver (2.0 ppm); sheep meat, fat, and meat by products except kidney and liver (0.1 ppm); stone fruit crop group 12 (1.0 ppm); wheat grain (0.1 ppm); and wheat straw (1.5 ppm). In addition, time-limited regional tolerances for sorghum grain and stover at 0.1 ppm and 1.5 ppm, respectively were established to support a section 18 Crisis exemption in Texas (expiration date December 31, 2000) and Nebraska, Kansas, and Oklahoma (expiration date September 30, 2000).

Additional uses of propiconazole have been requested in several pending petitions. Proposed tolerances include: PP 5F4424 for use of propiconazole on dry bean and soybean - dry bean forage (8.0 ppm); dry bean hay (8.0 ppm); dry bean vines (0.5 ppm); dry bean (0.5 ppm), soybeans (0.5 ppm); soybean fodder (8.0 ppm); soybean forage (8.0 ppm); soybean hay (25.0 ppm); and soybean straw (0.1 ppm); PP 5F4591 for use of propiconazole on berries, carrots and onions - berry crop grouping (1.0 ppm); dry bulb onion (0.3 ppm); green onion (8.0); PP 5F3740 - tree nut crop grouping (0.1 ppm); PP 5F4498 - inadvertent/rotational crop tolerances for alfalfa forage (0.1 ppm), alfalfa hay (0.1 ppm), grain sorghum fodder (0.3 ppm), grain sorghum forage (0.3 ppm) and grain sorghum grain (0.2 ppm).

ii. *Drinking water*. Other potential sources of exposure of the general population to residues of propiconazole are residues in drinking water and exposure from non-occupational sources. Review of environmental fate data by the Environmental Fate and Effects Division of USEPA indicates that propiconazole is persistent and moderately mobile to relatively immobile in most soil and aqueous environments. No Maximum Concentration Level (MCL) currently exists for residues of propiconazole in drinking water and no drinking water health advisory levels have been established for propiconazole.

The degradation of propiconazole is microbially mediated with an aerobic soil metabolism half-life of 70 days. While propiconazole is hydrolytically and photochemically stable ($T_{\frac{1}{2}}$ >100 days), it binds very rapidly and tightly to soil particles following application. Adsorption/desorption and aged leaching data indicate that propiconazole and its degradates will primarily remain in the top 0–6 inches of the soil. It has been determined that under field conditions propiconazole will degrade with a half-life of approximately 100 days.

2. *Non-dietary exposure*. Propiconazole is registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, no reliable data exist which would allow quantitative incorporation of risk from these uses into a human health risk assessment. The exposure to propiconazole from contacting treated wood products is anticipated to be very low since the surface of wood is usually coated with paint or sealant when used in or around the house. The non-occupational exposure from lawn and ornamental applications is also considered to be minor. It is estimated that less than 0.01% of all households nationally use propiconazole in a residential setting.

*D. Cumulative Effects*

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable information to indicate that toxic effects produced by propiconazole would be cumulative with those of any other types of chemicals. While other triazoles are available on the commercial or consumer market, sufficient structural differences exist among these compounds to preclude any categorical grouping for cumulative toxicity. Consequently, Novartis is considering only the potential risks of propiconazole in its aggregate exposure assessment.

*E. Safety Determination*

1. *U.S. population—Reference dose.* Using the conservative exposure assumptions described above (100% stone fruit acres treated and tolerance level residues) and based on the completeness and reliability of the toxicity data base for propiconazole, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that only 16% of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

2. *Infants and children*. Developmental toxicity (e.g., reduced pup weight and ossification) was observed in the rat teratology studies and 2–generation rat reproduction studies at maternally toxic doses. Some of these findings are judged to be nonspecific, secondary effects of maternal toxicity. The lowest NOAEL for developmental toxicity was established in the rat teratology study at 30 mg/kg, a level 24–fold higher than the NOAEL of 1.25 mg/kg on which the RfD is based.

3. *Reference dose.* Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of propiconazole is 26% for nursing infants less than 1 year old, 65% for non-nursing infants less than 1 year old, 35% for children 1–6 years old, and 23% for children 7–12 years old. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

*F. International Tolerances*

International CODEX values are established for almond, animal products, bananas, barley, coffee, eggs, grapes, mango, meat, milk, oat, peanut-whole, peanut grains, pecans, rape, rye, stone fruit, sugar cane, sugar beets, sugar beet tops, and wheat. The U.S. residue definition includes both propiconazole and metabolites determined as 2,4-dichlorobenzoic acid (DCBA), while the CODEX definition is for propiconazole, per se, i.e. parent only. This difference results in unique tolerance expressions with the U.S. definition resulting in the higher tolerance levels.

[FR Doc. 00–31056 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–50877; FRL–6758–8]**

### Issuance of Experimental Use Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** *By mail*: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*In person or by telephone*: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in the experimental use permit: 1921 Jefferson Davis Hwy., Arlington, VA.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the designated contact person listed for the EUP.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' 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/.

### II. EUPs

EPA has issued the following EUP:

*064500–EUP–1*. Issuance. U.S. Department of Agriculture, Agricultural Research Service, Pacific West Area (PWA), Department of Plant Pathology, University of California, One Shield Ave., Davis, CA 95616. This experimental use permit allows the use of 25 gallons of the biochemical pesticide sucrose octanoate esters on 50 acres of grapevines to evaluate the control of glassy-winged sharpshooter during post harvest. The program is authorized only in the State of California. The experimental use permit is effective from September 15, 2000 to December 15, 2000. This is a non-crop destruct EUP. (S. Diana Hudson; Rm. 910, Crystal Mall #2; telephone number: (703) 308–8713; e-mail address: hudson.diana@epa.gov).

Persons wishing to review the EUP are referred to the designated contact person. Inquiries concerning the permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: November 29, 2000.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00–31059 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6912–3]**

### ILCO Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into two settlement agreements with a total of 45 de-minimis parties for response costs pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding the Interstate Lead Company (ILCO) Superfund Site located in Leeds, Alabama. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–PSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before January 5, 2001.

Dated: November 20, 2000.

**Anita Davis,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–31052 Filed 12–5–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6912–1]**

### Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Tokeland Cow Dip Pit CERCLA Site, Pacific County, Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement and request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act (''CERCLA''), notice is hereby given of a proposed settlement to resolve a claim against Estate of Virginia M. Nelson. The proposed settlement concerns the federal government's past response costs at the Tokeland Cow Dip Pit CERCLA Site, Pacific County, Washington. The settlement requires the settling party, the Estate of Virginia M. Nelson, to pay $57,111.55 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, office at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Mary Shillcutt, Regional Hearing Clerk, EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–2429. Comments should

reference the ''Tokeland Cow Dip Pit CERCLA Site'' and EPA Docket No. CERCLA–10–97–0043 and should be addressed to Ms. Shillcutt at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Byrne, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–0050.

Dated: November 21, 2000.

**Charles E. Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00–30909 Filed 12–5–00; 8:45 am]

**BILLING CODE 6560–50–U**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Executive Office of the President; Federal Policy on Research Misconduct; Preamble for Research Misconduct Policy

**AGENCY:** Office of Science and Technology Policy.

**ACTION:** Notification of Final Policy.

**SUMMARY:** The Office of Science and Technology Policy (OSTP) published a request for public comment on a proposed Federal research misconduct policy in the October 14, 1999 **Federal Register** (pp. 55722–55725). OSTP received 237 sets of comments before the public comment period closed on December 13, 1999. After consideration of the public comments, the policy was revised and has now been finalized. This notice provides background information about the development of the policy, explains how the policy has been modified, and discusses plans for its implementation.

**EFFECTIVE DATE:** December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Holly Gwin, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20502. Tel: 202–456–6140; Fax: 202–456–6021; e-mail: hgwin@ostp.eop.gov.

**SUPPLEMENTARY INFORMATION:** Advances in science, engineering, and all fields of research depend on the reliability of the research record, as do the benefits associated with them in areas such as health and national security. Sustained public trust in the research enterprise also requires confidence in the research record and in the processes involved in its ongoing development. For these reasons, and in the interest of achieving greater uniformity in Federal policies in this area, the National Science and Technology Council (NSTC) initiated discussions in April 1996 on the development of a research misconduct policy. The Office of Science and Technology Policy (OSTP) provided leadership and coordination. The NSTC approved the proposed draft policy in May 1999, clearing the way for the October 14, 1999 **Federal Register** notice. Public comments in response to that notice have been reviewed. The purpose of this notice is to provide information about the policy as it has now been finalized.

This policy applies to federally-funded research and proposals submitted to Federal agencies for research funding. It thus applies to research conducted by the Federal agencies, conducted or managed for the Federal government by contractors, or supported by the Federal government and performed at research institutions, including universities and industry.

The policy establishes the scope of the Federal government's interest in the accuracy and reliability of the research record and the processes involved in its development. It consists of a definition of research misconduct and basic guidelines for the response of Federal agencies and research institutions to allegations of research misconduct.

The Federal agencies that conduct or support research will implement this policy within one year of the date of publication of this notice. An NSTC interagency research misconduct policy implementation group has been established to help achieve uniformity across the Federal agencies in implementation of the research misconduct policy. In some cases, this may require agencies to amend or replace extant regulations addressing research misconduct. In other cases, agencies may need to put new regulations in place or implement the policy through administrative mechanisms.

The policy addresses research misconduct. It does not supersede government or institutional policies or procedures for addressing other forms of misconduct, such as the unethical treatment of human research subjects or mistreatment of laboratory animals used in research, nor does it supersede criminal or other civil law. Agencies and institutions may address these other issues as authorized by law and as appropriate to their missions and objectives.

### Summary of Comments

The Office of Science and Technology Policy received 237 comments on the proposed Federal Research Misconduct Policy. Letters were signed by individuals, and by representatives of universities, university associations, Federal agencies, and private entities. Comments are available for review. Comments that resulted in a modification of the policy are summarized below. A section that addresses other questions raised by the comments follows the summary of modifications.

*Uniform Federal Policy*

*Issue:* Many comments recommended various mechanisms to ensure uniform implementation of this policy.

*Response:* An NSTC research misconduct policy implementation group has been formed to foster uniformity among the agencies in their implementation of the policy.

*Section I: Research Misconduct Defined*

*Issue:* A number of comments suggested that the definition of fabrication be modified to read as follows: ''Fabrication is making up data or results and recording or reporting them.'' (Italicized words are suggested addition.) This change is to clarify that the raw data collected or generated in the research process can be fabricated just as can the results of the research.

*Response:* This change was accepted.

*Issue:* A number of commenters interpreted the definition of plagiarism to imply that using material gathered during the peer review process was acceptable as long as it is cited.

*Response:* The policy is intended to address the problem of reviewers who take material from the peer review process and use it without attribution. This constitutes plagiarism. We have deleted the phrase ''including those obtained through confidential review of others' research proposals and manuscripts'' to avoid any appearance of condoning a breach of confidentiality in the peer review process.

*Issue:* Despite general support for the rationale for the phrase ''does not include honest error or honest differences of opinion,'' several comments requested various clarifications.

*Response:* This phrase is intended to clarify that simple errors or mere differences of judgment or opinion do not constitute research misconduct. The phrase does not create a separate element of proof. Institutions and agencies are not required to disprove possible ''honest error or differences of opinion.'' The phrase has been retained, with the deletion of the second ''honest'' of the phrase as redundant.

*Issue:* A number of comments raised questions about what fields of research are included in the definition of research. For example, some readers were unsure about the applicability of

the policy as written to medicine or the social sciences.

*Response:* The policy applies to research funded by the Federal agencies. In order to be responsive to specific inquiries about what fields of research are covered by the policy, an illustrative, non-exclusive list of selected fields of research is now included in the policy itself.

*Section II: Findings of Research Misconduct*

*Issue:* Several comments stressed the need for greater precision in the phrase ''significant departure from accepted practices of the scientific community.''

*Response:* This phrase is intended to make it clear that behavior alleged to involve research misconduct should be assessed in the context of community practices, meaning practices that are generally understood by the community but that may not be in a written form. For clarification purposes and in order to be more comprehensive, the term ''scientific community'' has been modified to read ''relevant research community.'' The policy is not intended to ratify those ''accepted practices'' but rather to indicate that these may vary among different communities.

*Issue:* Several comments requested clarification regarding the level of intent that is required to be shown in order to reach a finding of research misconduct.

*Response:* Under the policy, three elements must be met in order to establish a finding of research misconduct. One of these elements is a showing that the subject had the requisite level of intent to commit the misconduct. The intent element is satisfied by showing that the misconduct was committed ''intentionally, or knowingly, or recklessly.'' Only one of these needs to be demonstrated in order to satisfy this element of a research misconduct finding.

*Section III: Responsibilities of Federal Agencies and Research Institutions*

*Issue*: Some comments indicated that this section could be incorrectly construed to require appeal of the agency misconduct finding back to the institution.

*Response*: The policy has been clarified to affirm that each agency should establish an appeals process for persons found by the agency to have engaged in research misconduct. The subject of the agency finding cannot appeal the agency decision back to the institution, although some institutions do offer an appeal of the institutional finding at the institutional level.

*Section IV: Guidelines for Fair and Timely Procedures*

*Issue*: The comments indicated some uncertainty about to whom the actions section applied.

*Response*: The actions delineated are those that may be taken by the Federal agencies if research misconduct has been shown to have occurred. The section has thus been renamed ''Agency Administrative Actions.''

*Issue*: The suggestion was made that publications based on false or fabricated data, or including such data, should be required to be officially withdrawn.

*Response*: Correction of the research record has been added to the list of possible actions to be taken if a researcher is found to have engaged in research misconduct.

*Issue*: The suggestion was made that safeguards for informants and subjects of allegations be made more explicit.

*Response*: More explicit safeguards have been added to the policy for both informants and subjects.

**Other Comments**

Several comments and clarifications are addressed in the following question and answer format rather than through modification of the policy.

*Will agencies be required to announce the details of their implementation plans*? Yes. Agencies will announce the details of their implementation plans, including those plans that do not require formal rulemaking.

*What types of misconduct are covered by this policy*? This policy is limited to addressing misconduct related to the conduct and reporting of research, as distinct from misconduct that occurs in the research setting but that does not affect the integrity of the research record, such as misallocation of funds, sexual harassment, and discrimination. This policy does not limit agencies or research institutions from addressing these other issues under appropriate policies, rules, regulations, or laws. In addition, should the behavior associated with research misconduct also trigger the applicability of other laws (including criminal law) this policy is not intended to limit agencies or research institutions from pursuing these matters under separate authorities.

*Does this policy address misrepresentation of a researcher's credentials or publications*? Yes, misrepresentation of a researcher's qualifications or ability to perform the research in grant applications or similar submissions may constitute falsification or fabrication in proposing research.

*Are authorship disputes covered by this policy*? Authorship disputes are not covered by this policy unless they involve plagiarism.

*Does research misconduct include the mistreatment of human subjects or animals in research*? This policy addresses activity that occurs in the course of human subjects or animal research that involves research misconduct as defined by the policy. Thus, falsification, fabrication, or plagiarism that occurs during the course of human or animal research is addressed by this policy. However, other issues concerning the ethical treatment of human or animal subjects are covered under separate procedures and are not affected by this policy.

*Why doesn't the policy provide immunity for research misconduct investigative committees*? Providing immunity to research misconduct investigative committees and other participants in institutional and agency research misconduct proceedings would require significant statutory or regulatory initiatives which will be explored separately from this policy.

*Aren't there circumstances when omission of data or results is appropriate*? A number of commenters suggested that there are circumstances when it may be appropriate to omit data in reporting research results. It is not the intent of this policy to call accepted practices into question. However, the omission of data is considered falsification when it misleads the reader about the results of the research.

*Does this policy supersede institutional policies regarding research misconduct*? Non-federal research institutions have authority to establish policies for research and employee misconduct that serve their own institutional purposes. However, the Federal research misconduct policy (as implemented by the agencies) provides the relevant guidance to institutions for purposes of Federal action.

*Does this policy supersede other agency policies, procedures, rules, and regulations*? Agencies must comply with all relevant Federal personnel policies and laws in responding to allegations of research misconduct. However, personnel actions may not adequately protect the public from the consequences of falsified, fabricated or plagiarized research. For example, Federal personnel policies may permit termination of an employee who commits research misconduct, but may not address the problem of research misconduct or seek to prevent it from recurring. The administrative actions available under the Federal research misconduct policy, such as debarment from federal funding, supervision and certification of research, and correction

of the literature, are designed to specifically address the problems raised by research misconduct.

*Must all three elements in the Finding of Research Misconduct section be present for there to be a finding of research misconduct*? Yes.

*Who makes the final determination about whether or not there is a finding of research misconduct*? The Federal agency will make the final decision about whether to make an agency finding of research misconduct. However, within its own internal jurisdiction, a non-Federal research institution may establish policies and take actions as appropriate to its needs and as consistent with other relevant laws.

*Shouldn't the burden of proof be more stringent, e.g., require ''clear and convincing evidence'' to support a finding of research misconduct*? While much is at stake for a researcher accused of research misconduct, even more is at stake for the public when a researcher commits research misconduct. Since ''preponderance of the evidence'' is the uniform standard of proof for establishing culpability in most civil fraud cases and many federal administrative proceedings, including debarment, there is no basis for raising the bar for proof in misconduct cases which have such a potentially broad public impact. It is recognized that non-Federal research institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, when their standard differs from that of the Federal government, research institutions must report their findings to the appropriate Federal agency under the applicable Federal government standard, i.e., preponderance.

*Why don't the Federal agencies conduct all inquiries and investigations*? Research institutions are much closer to what is going on in their own institutions and are in a better position to conduct inquiries and investigations than are the Federal agencies. While the Federal agencies could have taken on the task of investigating all allegations of research misconduct, or established a separate agency for this purpose, this would have involved a substantial new Federal bureaucracy, which is not thought desirable. An agency may take steps, as appropriate, should a research institution demonstrate a lack of commitment to the policy's guidelines.

*How will a lead agency be identified*? If more than one Federal agency has jurisdiction over allegations of research misconduct, those agencies should work together to designate a lead agency.

*What criteria will be used for selecting the research institution that will handle the response to the allegation of research misconduct*? In most cases, agencies will rely on the researcher's home institution to respond to allegations of research misconduct. However, in cases where the subject has switched institutions, it may be more appropriate for the institution where the alleged research misconduct occurred to respond to the allegation. The institution where the questioned research was conducted may have better access to the evidence and witnesses and therefore will have the capability to undertake a more efficient and thorough response.

*Shouldn't the policy be more explicit about time lines for a response to allegations of misconduct*? In establishing reasonable time lines the Federal agencies must balance the interests of concluding the process expeditiously while ensuring it has been conducted fairly and thoroughly. This will allow flexibility for the research institutions while at the same time ensuring that the process does not extend for an unreasonably long period. Research institutions should have the option to request reasonable extensions of agency timelines in individual cases.

*What can informants or subjects of allegations expect with regard to confidentiality*? The policy strives for confidentiality for all involved to the extent consistent with a fair and thorough process and as allowed by law, including applicable Federal and state freedom of information and privacy laws.

*Should the policy punish informants who act in bad faith or individuals who harass informants*? The principal aim of this policy is to communicate to the research community those behaviors that constitute research misconduct and to take actions where research misconduct is found to have occurred. As employers and managers of the research, non-Federal research institutions may adopt policies to address the consequences of false, malicious, or capricious allegations and to respond to retaliation against informants. Agencies may also address this issue in their implementation of this policy.

*How should the ''seriousness'' of the research misconduct be evaluated and how will this relate to any actions taken?* In determining what action to take, agencies should fully consider the level of intent of the misconduct, the consequences of the behavior, and other aggravating and mitigating factors.

**Next Steps**

The Federal agencies have up to one year from the date of publication of this notice to implement the policy. An interagency implementation group has been established under the auspices of the National Science and Technology Council to assist agencies in their implementation process and to strive for the highest level of uniformity possible and as appropriate in their implementation plans.

**Federal Policy on Research Misconduct [1]**

**I. Research [2] Misconduct Defined**

Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- Fabrication is making up data or results and recording or reporting them.
- Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.[3]
- Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- Research misconduct does not include honest error or differences of opinion.

**II. Findings of Research Misconduct**

A finding of research misconduct requires that:

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, or knowingly, or recklessly; and
- The allegation be proven by a preponderance of evidence.

[1] No rights, privileges, benefits or obligations are created or abridged by issuance of this policy alone. The creation or abridgment of rights, privileges, benefits or obligations, if any, shall occur only upon implementation of this policy by the Federal agencies.

[2] Research, as used herein, includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

[3] The research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

## III. Responsibilities of Federal Agencies and Research Institutions [4]

Agencies and research institutions are partners who share responsibility for the research process. Federal agencies have ultimate oversight authority for Federally funded research, but research institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

• *Agency Policies and Procedures.* Agency policies and procedures with regard to intramural as well as extramural programs must conform to the policy described in this document.

• *Agency Referral to Research Institution.* In most cases, agencies will rely on the researcher's home institution to make the initial response to allegations of research misconduct. Agencies will usually refer allegations of research misconduct made directly to them to the appropriate research institution. However, at any time, the Federal agency may proceed with its own inquiry or investigation. Circumstances in which agencies may elect not to defer to the research institution include, but are not limited to, the following: the agency determines the institution is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest, including public health and safety; the allegation involves an entity of sufficiently small size (or an individual) that it cannot reasonably conduct the investigation itself.

• *Multiple Phases of the Response to an Allegation of Research Misconduct.* A response to an allegation of research misconduct will usually consist of several phases, including: (1) an *inquiry*—the assessment of whether the allegation has substance and if an investigation is warranted; (2) an *investigation*—the formal development of a factual record, and the examination of that record leading to dismissal of the case or to a recommendation for a finding of research misconduct or other appropriate remedies; (3) *adjudication*—during which recommendations are reviewed and appropriate corrective actions determined.

• *Agency Follow-up to Institutional Action.* After reviewing the record of the investigation, the institution's recommendations to the institution's adjudicating official, and any corrective actions taken by the research institution, the agency will take additional oversight or investigative steps if necessary. Upon completion of its review, the agency will take appropriate administrative action in accordance with applicable laws, regulations, or policies. When the agency has made a final determination, it will notify the subject of the allegation of the outcome and inform the institution regarding its disposition of the case. The agency finding of research misconduct and agency administrative actions can be appealed pursuant to the agency's applicable procedures.

• *Separation of Phases.* Adjudication is separated organizationally from inquiry and investigation. Likewise, appeals are separated organizationally from inquiry and investigation.

• *Institutional Notification of the Agency.* Research institutions will notify the funding agency (or agencies in some cases) of an allegation of research misconduct if (1) the allegation involves Federally funded research (or an application for Federal funding) and meets the Federal definition of research misconduct given above, and (2) if the institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. When an investigation is complete, the research institution will forward to the agency a copy of the evidentiary record, the investigative report, recommendations made to the institution's adjudicating official, and the subject's written response to the recommendations (if any). When a research institution completes the adjudication phase, it will forward the adjudicating official's decision and notify the agency of any corrective actions taken or planned.

• *Other Reasons to Notify the Agency.* At any time during an inquiry or investigation, the institution will immediately notify the Federal agency if public health or safety is at risk; if agency resources or interests are threatened; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if Federal action is required to protect the interests of those involved in the investigation; if the research institution believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.

• *When More Than One Agency is Involved.* A lead agency should be designated to coordinate responses to allegations of research misconduct when more than one agency is involved in funding activities relevant to the allegation. Each agency may implement administrative actions in accordance with applicable laws, regulations, policies, or contractual procedures.

## IV. Guidelines for Fair and Timely Procedures

The following guidelines are provided to assist agencies and research institutions in developing fair and timely procedures for responding to allegations of research misconduct. They are designed to provide safeguards for subjects of allegations as well as for informants. Fair and timely procedures include the following:

• *Safeguards for Informants.* Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith.

• *Safeguards for Subjects of Allegations.* Safeguards for subjects give individuals the confidence that their rights are protected and that the mere filing of an allegation of research misconduct against them will not bring their research to a halt or be the basis for other disciplinary or adverse action absent other compelling reasons. Other safeguards include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct (if any).

• *Objectivity and Expertise.* The selection of individuals to review allegations and conduct investigations who have appropriate expertise and have no unresolved conflicts of interests help to ensure fairness throughout all phases of the process.

• *Timeliness.* Reasonable time limits for the conduct of the inquiry, investigation, adjudication, and appeal

[4] The term ''research institutions'' is defined to include all organizations using Federal funds for research, including, for example, colleges and universities, intramural Federal research laboratories, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Independent researchers and small research institutions are covered by this policy.

phases (if any), with allowances for extensions where appropriate, provide confidence that the process will be well managed.

• *Confidentiality During the Inquiry, Investigation, and Decision-Making Processes.* To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know. Records maintained by the agency during the course of responding to an allegation of research misconduct are exempt from disclosure under the Freedom of Information Act to the extent permitted by law and regulation.

**V. Agency Administrative Actions**

• *Seriousness of the Misconduct.* In deciding what administrative actions are appropriate, the agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowing, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.

• *Possible Administrative Actions.* Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the U.S. General Services Administration. With respect to administrative actions imposed upon government employees, the agencies must comply with all relevant federal personnel policies and laws.

• *In Case of Criminal or Civil Fraud Violations.* If the funding agency believes that criminal or civil fraud violations may have occurred, the agency shall promptly refer the matter to the Department of Justice, the Inspector General for the agency, or other appropriate investigative body.

**VI. Roles of Other Organizations**

This Federal policy does not limit the authority of research institutions, or other entities, to promulgate additional research misconduct policies or guidelines or more specific ethical guidance.

**Barbara Ann Ferguson,**

*Assistant Director for Budget and Administration, Office of Science and Technology Policy.*

[FR Doc. 00–30852 Filed 12–5–00; 8:45 am]

BILLING CODE 3170–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 27, 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 January 5, 2001. 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.:* 3060–0951.

*Title:* Service of Petitions for Preemption, 47 CFR 1.1204(b) Note and 1.1206(a) Note 1.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; businesses or other for-profit, not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 125.

*Estimated Time Per Response:* 15 minutes.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 30 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which as cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local government whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

*OMB Control No.:* 3060–0937.

*Title:* Establishment of a Class A Television Service, MM Docket No. 00–10.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 1,000 respondents; 19,370 responses.

*Estimated Time Per Response:* .166 hours to 52 hours.

*Frequency of Response:* Recordkeeping requirement, on occasion and quarterly reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 396,251 hours.

*Total Annual Cost:* $2,284,000.

*Needs and Uses:* The Community Broadcasters Protection Act directed the Commission to make Class A television licensees subject to the same operating requirements as that of full-service broadcast stations. The Commission has

modified Part 73 to incorporate Class A licensees. The data will be used to ensure that the public is being served and will not cause harmful interference.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–30970 Filed 12–05–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 00–2692]**

## Consumer/Disability Telecommunications Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces formation of the Consumer/Disability Telecommunications Advisory Committee (hereinafter ''the Committee'') to make recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations) in proceedings before the Commission. The Commission also requests applications of representatives to serve on the Committee.

**DATES:** Applications should be received no later than January 15, 2001.

**ADDRESSES:** Applications should be sent to the Federal Communications Commission, Consumer Information Bureau, Attn: Scott Marshall, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Consumer Information Bureau, Federal Communications Commission, and 445 12th Street, SW., Washington, DC 20554. Telephone 202–418–2809 (voice) or 202–418–0179 (TTY).

**SUPPLEMENTARY INFORMATION:** This public notice, which announces formation of the Consumer/Disability Advisory Telecommunications Committee, was released November 30, 2000.

### Electronic Access and Filing

A copy of this notice is also available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at *http://www.fcc.gov/cib/dro.* Applications for membership on the Committee may also be sent to the Commission via email addressed to *smarshal@fcc.gov* or may be transmitted via facsimile to 202–418–1414.

### Background

The Telecommunications Act of 1996 paved the way for a new era of greater competition and consumer choice in telecommunications for all Americans. Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App II, the Commission announces the formation of the Consumer/Disability Telecommunications Advisory Committee to ensure that all Americans, including individuals with disabilities and underserved populations such as tribal nations, have equal access to telecommunications products and services; and to facilitate consumer involvement and input into all activities of the Commission.

### Functions

The Committee will provide general guidance to the Federal Communications Commission, and will make specific recommendations on issues and questions presented to it through the Commission's Consumer Information Bureau (CIB). The issues or questions referred to the Committee will include, but are not limited to the following topic areas:

- Consumer Protection and Education (e.g., cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations).
- Access by People with Disabilities (e.g., telecommunications relay services, video description, captioning, accessible billing, and access to telecommunications products and services).
- Impact of New and Emerging Technologies (e.g., availability of Broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).
- Enforcement and Consumer Participation in the FCC Rulemaking Process.

It is anticipated that the Committee will meet a minimum of two times per year in Washington, DC, and that approximately three informal subcommittees will be established to facilitate the Committee's work between meetings of the full Committee.

### Applications for Membership

The Commission seeks applications from interested individuals or organizations from both the public and private sectors that wish to be considered for membership on the Committee. Selections will be made on the basis of factors such as expertise and viewpoints that are necessary to address effectively the questions presented to the Committee. Members should be recognized experts in their fields, including but not limited to, consumer advocacy organizations, organizations representing persons with disabilities, representatives of underserved populations, equipment manufacturers, telecommunications service providers (including wireless), broadcast/cable providers, state/local regulators, and/or other qualified persons serving in their individual capacities. Members must be willing to commit to a two-year term of service, should be willing and able to attend a minimum of two (2) one-day meetings per year of the Committee held in Washington, D.C., and are also expected to participate in deliberations of at least one subcommittee. The Commission is unable to pay per diem or travel costs. Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities who are, or will, be regulated by or that have interests before the FCC. The number of Committee members will be limited to effectively accomplish the Committee's work. Organizations with similar interests are encouraged to submit a single application to represent their interests. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, participate through subcommittees, and to comment at Committee meetings. Applications should be sent to the Commission at the address listed at the beginning of this notice, and should be received by the Commission no later than January 15, 2001. The application should include the representative's name (and for organizations, the name of an alternate), title, address and telephone number, a statement of the interests represented and the consumer and/or disability issues of interest to the applicant; and a description of the applicant's qualifications. The application should further be supported by a statement indicating a willingness to serve on the Committee for a two-year period of time; to attend a minimum of two (2) one-day meetings per year in Washington DC; and a commitment to work on at least one subcommittee, at the applicant's own expense. After the applications have been reviewed, the Commission will publish a notice in the **Federal Register** announcing the appointment of the Committee members

and the first meeting date of the Committee. It is anticipated that the first Committee meeting will take place in March of 2001.

The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. App II. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

Federal Communications Commission.

**Karen Peltz Strauss,**

*Deputy Bureau Chief, Consumer Information Bureau.*

[FR Doc. 00–31082 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 00–2684]**

## Public Safety National Coordination Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Orlando, Florida. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the eleventh meeting of the Public Safety National Coordination Committee.

**DATES:** January 19, 2001 at 9:30 a.m.–12:30 p.m.

**ADDRESSES:** Holiday Inn Select, 5750 T. G. Lee Blvd., Orlando, Florida 32822.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

**SUPPLEMENTARY INFORMATION:** Following is the complete text of the Public Notice: This Public Notice advises interested persons of the eleventh meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Orlando, Florida.

The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

*Date:* January 19, 2001.

*Meeting Time:* General Membership Meeting—9:30 a.m.–12:30 p.m.

*Address:* Holiday Inn Select, 5750 T. G. Lee Blvd., Orlando, Florida 32822.

The NCC Subcommittees will meet from 9:00 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee including, without limitation, recommendations for an incident response system, recommendations for the number of interoperability channels to be operator-accessible on mobile and portable radios; recommendations on interoperability channel labeling conventions and any other matters related to interoperability.
4. Report from the Technology Subcommittee including, without limitation, discussion of an encryption standard appropriate for use on the narrowband 700 MHz public safety frequencies; technology-related issues arising from the recommendations of the other subcommittees; and any other matters related to interoperability.
5. Report from the Implementation Subcommittee including, without limitation, recommendations for guidelines and model documents for use by Regional Planning Committees; recommendations for use of a pre-coordination database; operations-related issues arising from the recommendations of the other subcommittees; and any other matters related to interoperability.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the eleventh meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing to jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated

Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

**Jeanne Kowalski,**

*Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–31081 Filed 12–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

*Special Executive Session*

Date & Time: *Thursday, November 30, 2000, following the open meeting.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public pursuant to 11 CFR § 2.4(b)(1).

Item to be discussed: Personnel.

Date & Time: *Tuesday, December 12, 2000 at 10:00 a.m.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personal rules and procedures or matters affecting a particular employee.

Date & Time: *Thursday, December 14, 2000 at 10:00 a.m.*

Place: 999 E Street, NW., Washington, DC.

Status: This meeting was closed to the public.

Item to be discussed:

Correction and Approval of Minutes

Election of Officers.

Future Meeting Dates.

Draft Advisory Opinion 200–28: American Seniors Housing Associaiton (ASHA) and the National Multi Housing Council (NMHC) by counsel, Cheryl M. Cronin.

Draft Advisory Opinion 2000–36: Andersen Consulting PAC by counsel, John C. Keeney, Jr.

Draft Advisory Opinion 2000–38: Democractic Party of the commonwealth of Puerto Rico.

Draft Advisory Opinion 2000–39: Pacific Green Party of Oregon by Trey Smith, Treasurer.

Regulations Priority Report.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 00–31219 Filed 12–4–00; 2:11 pm]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011700–002.

*Title:* Senator/CSAV Slot Charter Agreement.

*Parties:* Senator Lines GmbH, Compania Sud Americana de Vapores.

*Synopsis:* The proposed amendment would expand the geographic scope of the Agreement to include ports in Asia, Central America, and Mexico.

*Agreement No.:* 011735.

*Title:* Safmarine/Andrew Weir Cooperative Working Agreement.

*Parties:* Andrew Weir Shipping Limited, Safmarine Container Lines NV.

*Synopsis:* The proposed Agreement provides that the parties will not compete with one another in the trade between U.S. ports and, generally, ports in South and East Africa, Australia, and New Zealand. This Agreement will expire on December 31, 2002.

*Agreement No.:* 011736.

*Title:* SEN/CSAV Cross Slot Charterparty Agreement on AMA/MPX.

*Parties:* Senator Lines GmbH, Bremen, Compania Sud Americana de Vapores S.A.

*Synopsis:* The proposed agreement authorizes the parties to charter space to and from each other on vessels operated as part of services in which each party respectively participates, covering the trades between United States East Coast ports and ports in Asia, the Middle East, and South Europe.

Dated: December 1, 2000.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–31073 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant: Global Cargo Corp., 8470 N.W. 30th Terrace, Miami, FL 33122, Officers: Pedro Altove, Vice President (Qualifying Individual), Homero Hauque, President.

Dated: December 1, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–31072 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 4014F | Air Cargo Centralam, Inc., 8001 S.W. 157th Court, Miami, FL 33193 | October 13, 2000. |
| 1483NF | Tokyo Express Co., Inc., 70 Charter Oak Avenue, San Francisco, CA 94124 | July 13, 2000. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–31070 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

*License Number:* 4619F.

*Name:* Amad Corporation d/b/a Amad Forwarding Corporation.

*Address:* 3550 N.W. 33rd Street, Miami, FL 33142

*Date Revoked:* November 8, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 4384F.

*Name:* Continuity Corporation d/b/a Alamo Forwarding.

*Address:* 2320 McCue Road, Houston, TX 77056

*Date Revoked:* November 8, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 14049N.

*Name:* Ever-Lasting Int'l Inc.

*Address:* 179–39 149th Avenue, Rm. 105, Jamaica, NY 11434

*Date Revoked:* November 5, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 13730N.

*Name:* Freight Systems International, Inc.

*Address:* 1300 Newark Turnpike, Kearny, NJ 07032

*Date Revoked:* November 8, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 4541N.

*Name:* Southeast Logistics International, Inc.

*Address:* 122 Agape Street, Williamson, GA 30292

*Date Revoked:* October 31, 2000.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–31071 Filed 12–5–00; 8:45 am]

BILLING CODE 6730–01–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 December 21, 2000.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Stephen Dale Kroenke, Douglas Britt Kroenke, and Dwight Alan Kroenke*, all of Lincoln, Missouri; to acquire voting shares of Lincoln Bancshares, Inc., Lincoln, Missouri, and thereby indirectly acquire voting shares of Farmers Bank of Lincoln, Lincoln, Missouri.

Board of Governors of the Federal Reserve System, December 1, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–31030 Filed 12–5–00; 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 January 2, 2001.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Arkansas State Bancshares, Inc.,* Siloam Springs, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Arkansas State Bank, Siloam Springs, Arkansas.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Triple J. Financial, Inc.,* Claude, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Caprock Bancshares, Inc., Claude, Texas; and thereby indirectly acquire First National Bank of Claude, Claude, Texas.

Board of Governors of the Federal Reserve System, December 1, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–31029 Filed 12–5–00; 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 December 21, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Community First Bancshares, Inc.,* Union City, Tennessee; to acquire three offices of an unaffiliated finance company, and thereby engage directly in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 1, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–31028 Filed 12–5–00; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management of Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. National Centers of Excellence in Women's Health Program Quantitative Evaluation Survey—NEW—The Office on Women's Health is proposing a survey of patients receiving services at the fifteen National Center of Excellence (CoE) in Women's Health clinical care centers. This survey will provide an assessment of the level of patient satisfaction and service utilization at the CoEs for comparison to other data on women's health service utilization.

*Respondents:* Individuals.

*Number of Respondents:* 3,000.

*Burden per Response:* 20 minutes.

*Total Burden:* 1,000 hours.

*OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 27, 2000.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 00–30964 Filed 12–5–00; 8:45 am]

BILLING CODE 4150–33–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB review; comment request

*Title:* Child Care Case-Level Report.

*OMB No.:* 0970–0167.

*Description:* Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option) include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. Disagregate data is used to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801.

*Respondents:* States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–801 | 56 | 4 | 20 | 4,480 |
| Estimated Total Annual Burden Hours | | | | 4,480 |

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after

publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 30, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–30963 Filed 12–5–00; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project:* Mexican Border Youth Survey—New—SAMHSA's Center for Substance Abuse Prevention is planning to conduct breath test surveys at the U.S./Mexican border to address underage and binge drinking related problems to both sides of the border. The surveys are a component of the Safe Crossing environmental program in two Texas sites along the U.S.-Mexico border. The initial project targeting underage and binge drinking was implemented in San Diego, California and yielded successful outcomes, including a 26% reduction in youth crossing the border to drink alcohol. The purpose of replicating the model in Texas is to test a local adaptation of the program which surveys youth crossing the U.S.-Mexico border. This effort informs the public of problem behaviors specific to their local community and serves to develop community awareness and inform community interventions, such as underage curfews and enforcing bar closing hours. The data collected will be made available to local groups to assist in raising community awareness of youth drinking issues. It is expected that communities will use the information to tailor interventions to reduce youth drinking-associated problems.

The survey will be a five-minute interview with youths 18 to 30 years of age returning to the U.S. from Mexico between midnight and 6 a.m. on Friday and Saturday evenings. The interview consists of 26 questions concerning drinking behavior and a breath test. Approximately 100 pedestrians and 100 motorists will be interviewed one weekend per month. A total of approximately 2,400 respondents will be interviewed; half of the interviews will be conducted at El Paso, TX/Juarez, Mexico and half at the Brownsville, TX/Matamoros, Mexico border crossing site. The total burden associated with this project is summarized in the table below.

| Number of responses | Respondents per respondent | Average burden per response (Hrs.) | Total burden |
|---|---|---|---|
| 2,400 | 1 | .083 | 200 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 30, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–31002 Filed 12–5–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project:* Measuring Progress of Consumer Involvement in Public Managed Behavioral Health Care—New—The tremendous growth of managed care over the last ten years has dramatically changed the ways that public sector mental health and substance abuse services are organized and funded. The numbers of persons enrolled in managed care programs

under Medicaid increased from 10 percent in 1991 to 54 percent in 1998, with escalating numbers of persons with disabilities included under the programs. The number of States with managed care programs in public mental health and substance abuse programs tripled in three years from 14 States in 1996 to 42 States in 1999. Currently, there are 39 States operating managed behavioral healthcare programs. The decrease is due to the fact that a few States terminated or did not implement planned programs.

SAMHSA has engaged in a number of projects to improve the genuine participation of consumers and family members in the design, procurement, implementation and evaluation of managed care programs in the public system. Under the SAMHSA Managed Care Initiative, a group of consumers, family members and advocacy groups developed the *Partners in Planning Guide* to educate consumers and family members on becoming active in designing managed care systems in their State. A related project supported training on the Guide at national and grassroots venues to advocated as well as persons with mental illnesses and/or chemical dependencies.

However, the impact of these and other efforts to promote greater inclusion of consumers and family members in system design remains largely unmeasured. The objective of this effort, sponsored by SAMHSA's Office of Managed Care, is to identify progress of the consumer and family member involvement in managed care. A survey will assess the level of consumer/family involvement in managed care design, implementation and evaluation. More specifically, mental health and substance abuse consumer leaders in targeted States will be surveyed about their involvement in Medicaid and waivered programs with behavioral healthcare services to assess: how consumer/family involvement has evolved over the past five years and identify areas of improvement and areas that still need improvement and reasons for the changes; the consumer's specific roles in formal governmental bodies, such as serving on the legislative commissions or governor advisory boards, etc; whether consumers and family members are finding useful the SAMHSA technical assistance documents and other resources for consumers and family members about managed behavioral healthcare. The resulting information will be shared with SAMHSA leadership and constituents to identify what works and best practices and to guide SAMHSA activities to further promotion of consumer and family involvement in managed care.

Participants in the survey will be identified through a combination of databases for the following constituencies: consumers/survivors, family members, and persons in recovery from substance abuse problems. In addition, recommendations from local mental health association and other advocate will be sought. The survey will involve approximately 3–5 individuals in each of 15 States. Total burden for this single-time survey is as follows:

| Number of respondents | Responses/ respondent | Burden/ response | Total burden (hrs.) |
|---|---|---|---|
| 75 | 1 | .37 | 28 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 28, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–31003 Filed 12–5–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2000 Survey of Mental Health Organizations, General Hospital Mental Health Services, and Managed Care Organizations (SMHO)—(OMB No. 0930–0119, revision)—The survey, to be conducted by SAMHSA's Center for Mental Health Services (CMHS), will be conducted in two phases. Phase I will be a brief two-three page inventory consisting of four forms: (1) a specialty mental health organization and general hospital with separate mental health services form; (2) a general hospital with integrated mental health services screener form; (3) a community residential organization screener form; and (4) a managed behavioral healthcare organization form. This short inventory will be sent to all known organizations to define the universe of valid mental health organizations to be sampled in Phase II. The inventory will collect basic information regarding the name and address of the organizations, their type and ownership, and the kinds of services provided.

Phase II will sample approximately 2,000 mental health organizations and utilize a more detailed survey instrument. Although the Sample Survey form will be more comprehensive, it will be very similar to surveys and inventories fielded in 1998, 1994, 1992 and earlier. The organizational data to be collected by the Sample Survey form include university affiliation, client/patient census by basic demographics, revenues, expenditures, and staffing.

The resulting database will be used to provide national estimates and will be the basis for the National Directory of Mental Health Services. In addition, data derived from the survey will be published by CMHS in *Data Highlights*, in *Mental Health, United States*, and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry. Mental Health, United States* is used by the general public, state governments, the U.S. Congress, university researchers, and other health care professionals.

| Questionnaire | Number of respondents | Responses/ respondent | Average hour/ response | Total burden |
|---|---|---|---|---|
| **Phase I (Inventory)** | | | | |
| Specialty Mental Health Organizations | 3,563 | 1 | 0.5 | 1,781 |
| State Central Database Processing | 413 | 1 | 0.2 | 83 |
| National Association of Psychiatric Health Systems Processing | 150 | 1 | 0.2 | 30 |
| General Hospitals with Separate Mental Health Services | 1,736 | 1 | 0.5 | 868 |
| General Hospitals with Integrated Mental Health Services | 3,617 | 1 | 0.5 | 1,809 |
| Community Residential Organizations | 1,415 | 1 | 0.5 | 707 |
| Managed Care Organizations | 1,740 | 1 | 0.5 | 870 |
| Phase I Subtotal | 12,634 | | | 6,148 |
| **Phase II (Sample Survey)** | | | | |
| Specialty Mental Health Organizations | 1,213 | 1 | 3.0 | 3,639 |
| State Central Database Processing | 140 | 1 | 0.5 | 70 |
| National Association of Psychiatric Health Systems Processing | 151 | 1 | 0.5 | 26 |
| General Hospitals with Separate Mental Health Services | 596 | 1 | 3.0 | 1,788 |
| Phase II Subtotal | 2,000 | | | 5,523 |
| Grand total | 12,634 | | | 11,671 |
| 3–Year Average | 4,211 | | | 3,890 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 30, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–31001 Filed 12–5–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4562–N–09]**

## Notice of Proposed Information Collection for Public Comment: 2001 American Housing Survey—National Sample

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**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 of 1995. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* February 5, 2001.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Contact Ronald J. Sepanik at (202)–708–1060, Ext. 5887 (this is not a toll-free number), or Jane M. Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301)–457–3235 (this is not a toll-free number).

**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).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* 2001 American Housing Survey—National Sample.

*OMB Control Number:* 2528–0017.

*Description of the need for the information and proposed use:* The 2001 American Housing Survey-National Sample (AHS–N) provides a periodic measure of the size and composition of the housing inventory in our country. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandate the collection of this information.

The 2001 survey is similar to previous AHS–N surveys and collects data on subjects such as the amount and types of housing in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With these data, policy analysts can monitor the interaction among housing

needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With these data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

*Agency Form Numbers:* Computerized Versions of AHS–22 and AHS–23.

*Members of affected public:* Households.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

Number of respondents: 55,000.

Estimate Responses per Respondent: 1 every two years.

Time per respondent: 34 minutes.

Total hours to respond: 31,167.

*Respondent's Obligation:* Voluntary.

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: November 17, 2000.

**Lawrence L. Thompson,**

*General Deputy Assistant Secretary for Policy Development and Research.*

[FR Doc. 00–30991 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4579–FA–03]**

## Announcement of Funding Awards—Fiscal Year 2000 Office of Troubled Agency Recovery Cooperative Agreements

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department from funds distributed to the Office of Troubled Agency Recovery during Fiscal Year 2000. This announcement contains the name and address of all awardees and the amount of each award.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Edgar, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1141. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Cooperative Agreement with each of the following recipients was issued pursuant to Section 6(j) of the United States Housing Act of 1937. The awards will be used to provide technical assistance to support troubled agency recovery efforts and funding assistance as necessary to remedy the substantial deterioration of living conditions in public housing or other related emergencies that endanger the health, safety, and welfare of the residents.

The Catalog of Federal Domestic Assistance number for this program is 14.859.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of each award as follows:

| Awardee | Amount |
|---|---|
| San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102 | $367,139 |
| Housing Authority of New Haven, 360 Orange St., New Haven, CT 06501 | 540,000 |
| Housing Authority of New London, 78 Walden Avenue, New London, CT 06320 | 111,000 |
| Topeka Housing Authority, 2101 SE California Avenue, Topeka, KS 66607 | 150,000 |
| Housing Authority of New Orleans, 4100 Touro Street, New Orleans, LA 70122 | 150,000 |
| Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141 | 3,500 |
| Muskegon Housing Commission, 1823 Commerce Street, Muskegon, MI 49440 | 115,000 |
| Housing Authority of Kansas City, 299 Paseo, Kansas City, MO 64106 | 475,000 |
| Saint Louis Housing Authority, 4100 Lindell Boulevard, Saint Louis, MO 63108 | 800,000 |
| Wellston Housing Authority, 1584 Ogdon Avenue, Wellston, MO 63112 | 50,000 |
| Sainte Genevieve Housing Authority, 225 Saint Joseph Street, Sainte Genevieve, MO 63670 | 55,000 |
| Omaha Housing Authority, 540 South 27th Street, Omaha, NE 68105 | 275,000 |
| Clinton Metropolitan Housing Authority, 478 Thorne Avenue, Wilmington, OH 45177 | 50,000 |
| Potter County Housing Authority, East Seventh Street, Coudersport, PA 16915 | 7,500 |
| Philadelphia Housing Authority, 2021 Chestnut Street, Philadelphia, PA 19103 | 1,800,000 |
| Franklin Housing Authority, 601 Campbell Avenue, Franklin, VA 23851 | 40,000 |

Dated: November 29, 2000.

**Milan Ordinec,**

*Acting General Deputy, Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–30988 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4623–N–01]**

## Deployment of the FHA TOTAL Mortgage Scorecard

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces HUD's intention to deploy the FHA TOTAL Scorecard for mortgage industry use.

TOTAL refers to ''Technology Open To All Lenders.'' The FHA TOTAL Scorecard, developed by HUD, assesses the credit worthiness of FHA borrowers by evaluating certain mortgage application and borrower credit information that has been statistically proven to accurately predict the likelihood of borrower default. The FHA TOTAL Scorecard is not an automated underwriting system; rather, it is a mathematical equation intended to be used within an automated underwriting system. HUD wishes to deploy the FHA TOTAL Scorecard with industry users

who share the Department's vision of increasing homeownership opportunities.

In order to participate in the Scorecard initiative, interested parties should have an automated underwriting system (''AUS'') in place. As this product offering relates solely to the deployment of a scorecard, the AUS will utilize its own checks for FHA eligibility rules and its own functionality for loan specific messages. Based on the Scorecard configurations, the industry user must be equipped with a Sybase Database Server that receives calls in XML or Sybase Open Client. In addition, the user must have a communication link to HUD (https). In order to maximize the effectiveness of the Scorecard, interested participants should consult their internal IT personnel to ensure sufficient capacity to house the FHA TOTAL Scorecard. Participants should be prepared to fully support the server under their current IT Operations center. Additionally, any programming related to required inputs/connectivity to the FHA TOTAL Scorecard are the responsibility of the industry users.

**ADDRESSES:** Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

**FOR FURTHER INFORMATION CONTACT:** Laura Donnelly, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9278, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C., 20410, telephone (202) 708–0614 (this is not a toll-free number). Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background, Purposes and Objectives

In July 1996, the FHA, an entity within the Department of Housing and Urban Development (''HUD'' or the ''Department'') issued Mortgagee Letter 96–34. That Mortgagee Letter set forth HUD/FHA's requirements and processes for approving automated mortgage underwriting systems (''AUSs'') to underwrite HUD/FHA insured mortgage loans. Mortgagee Letter 96–34 permitted lenders to utilize various AUSs in underwriting FHA loans, following screening, evaluation and approval of the AUS by FHA. Pursuant to Mortgagee Letter 96–34, two individual privately-developed mortgage scorecards were approved by HUD for use in the processing of HUD/FHA mortgage loans. Both of these systems employ mortgage scorecards developed by the system vendors using FHA borrower data. This notice is to inform the public that FHA intends to rescind approval of these proprietary scorecards and replace with the FHA TOTAL Scorecard. TOTAL refers to ''Technology Open To All Lenders.''

A Mortgagee Letter will be issued to supersede Mortgagee Letter 96–34, and outline the basic requirements for an AUS to be used in underwriting FHA loans; this future Mortgagee Letter may be further amended or supplemented by future mortgagee letters, handbooks, policy statements, or lender notices concerning AUSs. Prior approvals for use of privately-developed mortgage scorecards will be formally rescinded by written notice to the entities previously receiving such approvals. HUD anticipates providing three months prior notice of rescission and thereafter HUD will require use of the FHA TOTAL Scorecard in any AUS. Users of the FHA TOTAL Scorecard will receive documentation relief and credit policy waivers provided by FHA. FHA has also developed a Use Agreement which sets forth the requirements and responsibilities for implementation and use of the FHA TOTAL Scorecard by qualified lenders, government sponsored enterprises and their contractors, sponsors, loan correspondents and authorized agents that purchase, sell, underwrite or document HUD/FHA mortgage loans for lenders under HUD/FHA's Direct Endorsement procedures for various HUD/FHA mortgage insurance programs (hereinafter ''Lenders''). Please note that while FHA wishes to permit access to the FHA TOTAL Scorecard as widely as possible, only lenders with Direct Endorsement status may ''underwrite'' FHA insured loans, with or without use of AU systems, on FHA's behalf.

HUD/FHA's objectives for entering into the Use Agreement are to:

(a) Provide for the use and implementation of the FHA TOTAL Scorecard in AUSs used during the process of underwriting FHA loans;

(b) Identify and approve creditworthy borrowers that may have been excluded from homeownership under traditional HUD/FHA underwriting guidelines;

(c) Continue to ensure that no borrower will be denied an FHA-insured mortgage loan solely on the basis of a ''refer'' risk classification by an AUS.

(d) Expand access to mortgage credit for low-and moderate-income borrowers and other under served populations and locations and to discourage unlawful discrimination against borrowers protected by the Fair Housing Act and the Equal Credit Opportunity Act;

(e) Facilitate access to and reduce the cost and time associated with originating HUD/FHA-insured mortgages;

(f) Enhance HUD/FHA's ability to assess and manage risk and preserve the actuarial soundness of HUD/FHA's mutual mortgage insurance fund;

(g) Facilitate and encourage a standardized, industry-wide capability for communication and exchange of information among members of the mortgage lending community.

*This Notice*

HUD is in the process of deploying the FHA TOTAL Scorecard and will rescind the approval of scorecards under Mortgage Letter 96–34, ML 98–14 and ML 99–26. Upon completion of FHA's deployment efforts, FHA will require use of the FHA TOTAL Scorecard in any AUS and Users will receive documentation relief and credit policy waivers approved by FHA. HUD's goals are to increase the availability of the FHA TOTAL Scorecard and increase lenders' efficiencies through loan level data transfer on a real-time basis thereby reducing lenders reporting requirements and improving workflow processes through reduced data entry. Other goals include improving underwriting efficiencies by lenders, decreasing losses to FHA's insurance fund, and integrating the use of automated underwriting systems into FHA's existing processes and workflow including mortgage insurance endorsement processing.

To that end, HUD continues to work with Users to deploy the FHA TOTAL Scorecard.

Dated: November 29, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 00–30987 Filed 12–5–00; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Alaska Land Managers Forum

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum (ALMF) to be held on Thursday, December 14, 2000, beginning at 9:00 a.m. It will take place in conference room B, Department of the Interior, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports and informational briefings on recreation and tourism, and to announce the winners of the 2000 ALMF Tourism Awards Program.

**FOR FURTHER INFORMATION CONTACT:** Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

**Marilyn Heiman,**

*Special Assistant to the Secretary for Alaska, Department of the Interior, Office of the Secretary.*

[FR Doc. 00–31006 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–RP–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Alaska Land Managers Forum

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice, reestablishment of advisory committee.

**SUMMARY:** This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR 101–6.1015(a). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively reestablishing an advisory committee known as the Alaska Land Managers Forum. The purpose of the committee is to advise the Secretary on Alaska land and resources issues.

**EFFECTIVE DATE:** This decision is effective November 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Heiman, Special Assistant to the Secretary for Alaska, Office of the Secretary, Department of the Interior, 1689 C Street, Suite 100, Anchorage, Alaska 99501–5151, (907) 271–5485.

**Marilyn Heiman,**

*Special Assistant to the Secretary for Alaska, Department of the Interior, Office of the Secretary*

[FR Doc. 00–31005 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–RP–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Issue 2 Draft Comprehensive Conservation Plans and Associated Environmental Assessments for 2 National Wildlife Refuges in the Southwest Region

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared draft Comprehensive Conservation Plans (CCP) and associated Environmental Assessments for the Balcones Canyonlands National Wildlife Refuge, Austin, Texas; and the Buenos Aires National Wildlife Refuge, Sasabe, Arizona, pursuant to the National Wildlife Refuge System Improvement Act of 1997, and National Environmental Policy Act of 1969, and its implementing regulations.

**DATES:** The Service will be open to written comments through March 5, 2001.

**ADDRESSES:** Copies may be obtained by writing to: Mr. Tom Baca, Natural Resource Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Comments should be submitted to: Mr. Tom Baca, Natural Resource Planner, Division of Refuges, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306.

**SUPPLEMENTARY INFORMATION:** It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Public input into this planning process has assisted in the development of the draft documents. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service intends to consider comments and advice generated in response to the draft documents prior to the preparation of a final CCP. The Service is furnishing this notice in compliance with Service CCP policy: (1) To advise other agencies and the public of the availability of the draft documents, and (2) to obtain suggestions and advice for consideration in preparation of final documents.

The Service anticipates that final CCP documents and any associated NEPA documents will be available by July 31, 2001.

Dated: November 29, 2000.

**Thomas C. Bauer,**

*Acting Regional Director.*

[FR Doc. 00–31065 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Land Acquisitions; Paskenta Band of Nomlaki Indians of California

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

**SUMMARY:** The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 1898.16 acres, more or less, of land into trust for the Paskenta Band of Nomlaki Indians of California on November 30, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

**FOR FURTHER INFORMATION CONTACT:** George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070–MIB, 1849 C Street, NW., Washington, DC 20240, telephone (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 30, 2000, the Assistant

Secretary—Indian Affairs decided to accept approximately 1898.16 acres, more or less, of land into trust for the Paskenta Band of Nomlaki Indians of California pursuant to Section 305 of the Paskenta Band Restoration Act, 25 U.S.C. § 1300m–3 (1994). The Secretary shall acquire title in the name of the United States in trust for the Paskenta Band of Nomlaki Indians of California for the following parcels of land described below no sooner than 30 days after the date of this notice.

Containing 1,635.70 acres, more or less, located within Tehama County, California. Further described as follows:

Located in the Unincorporated Area

Parcel One: (APN 87–210–09)

The north half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom that portion conveyed to the United States of America, by deed recorded August 11, 1955 in Book 281 at page 80, official records of Tehama County, described as follows: A parcel of land in the north half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, described as follows; beginning at a point in the south boundary of Maywood Colony No. 24, as said colony is shown on the map entitled; ''Maywood Colony No. 24 Tehama County California:'', filed in the official records of county recorder of said county on April 23, 1900 in book ''B'' of maps at page 46, said point being also in the north boundary of the south half of said Section 5, distant therealong south 89°25′ east 1885.3 feet from a sandstone monument set at the west quarter corner of said section 5; thence south 89° 25′ east 97.3 feet along said common boundary; thence leaving said common boundary south 235.5 feet; thence east 102.7 feet; thence south 150.0 feet; thence south 78° 31′ west 204.1 feet; thence north 427.1 feet to the point of beginning.

Excepting therefrom that portion lying within parcel fourteen described herein.

Parcel Two: (APN 87–210–16)

The southeast quarter of Section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom that portion described as commencing at the northwest corner of the south one-half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof; thence 482 feet west parallel to the south line of section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, to the point of beginning; thence south 300 feet; thence west 330 feet; thence north 660 feet; thence east 330 feet; thence south 360 feet.

Also excepting therefrom the following described real property consisting of approximately 17.00 acres:

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of ''Parcel A'' which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence north 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Also excepting therefrom that portion lying within parcel thirteen described herein.

Parcel Three: (APN 87–210–19)

Commencing at the northwest corner of the south one-half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof; thence 482 feet west parallel to the south line of Section 6, Township 23 north, Range 3 west, Mount Diablo Meridian, to the point of beginning; thence south 300 feet; thence west 330 feet; thence north 660 feet; thence east 330 feet; thence south 360 feet.

Excepting therefrom the following described real property consisting of approximately 17.00 acres.

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of ''Parcel A'' which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence north 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Parcel Four: (APN 87–210–21)

The south half of the southwest quarter of Section 5, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133, official records.

Also excepting therefrom the following described real property consisting of approximately 3.91 acres.

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 41°48′03″ west a distance of 11.54 feet to the southwest corner of the ''Fly Pen Parcel'' which is the true point of beginning of this description, thence north 00°47′25″ east a distance of 406.28 feet to the northwest corner of the ''Fly Pen Parcel'', thence north 87°45′48″ east a distance of 420.05 feet to the northeast corner of the ''Fly Pen Parcel'', thence south 00°47′25″ west a distance of 406.28 feet to the southeast corner of the ''Fly Pen Parcel'', thence south 00°47′25″ west a distance of 420.05 feet to the true point of beginning of this description.

Also excepting therefrom the following described real property consisting of approximately 17.55 acres:

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 79°55′10″ east a distance of 1892.35 feet to the southwest corner of the ''Dam & Spillway Parcel'' which is the true point of beginning of this description, thence north 06°44′50″ east a distance of 516.20 feet to a point lying in the lake which is partially encompassed by the ''Dam & Spillway Parcel'', thence north 17°00′36″ west a distance of 514.96 feet to the northwest corner of the ''Dam & Spillway Parcel'' which point lies along the south side of an existing access road and fence, thence north 89°25′25″ east a distance of 851.69 feet more or less to the mid-section line of Section 5, Township 23 north, Range 3 west, which point is also the northeast corner of the ''Dam & Spillway Parcel'' thence south 00°03′59″ west along the said mid-section line a distance of 1021.68 more or less to the southeast corner of the ''Dam & Spillway Parcel'', thence north 89°23′44″ west a distance of 762.87 feet more or less to the true point of beginning of this description.

Parcel Five: (APN 87–220–11)

Lot 7 in block 213 of Maywood Colony No. 24, as the same is shown on the map entitled: ''Maywood Colony No. 24 Tehama Co. CAL. T–23 N R 3 W.'', filed in the office of the county recorder of the County of Tehama, State of California April 23, 1900 in book B of maps at page 46.

Excepting therefrom: Beginning at the northeast corner of lot 7 of said block 213 and running thence along the east boundary of said lot 7, south 0°21′ east 641.7 feet to the southeast corner of said lot 7; thence continuing along the southerly prolongation of said east boundary, south 0°21′ east 20.0 feet to a point in the common boundary between Maywood Colony No. 24 and the south half of Section 5, Township 23 north, Range 3 west of the Mount Diablo Meridian; thence running along said common boundary north 89°25′ west 97.3 feet; thence leaving said common boundary north 20.0 feet to a point in the south boundary of said lot 7; thence continuing north 641.7 feet to a point in the common boundary between lots 2 and 7 of said block 213; thence running along last said common boundary south 89°23′ east 93.3 feet to the point of beginning.

Also excepting therefrom all oil, gas, minerals and hydrocarbon substances as excepted in the deed from William E. MacAulay, Et Ux, to A & K Cattle Company, Inc., recorded March 4, 1991 as document No. 2514, official records.

Parcel Six: (APN 87–220–12)

Lot 6 in block 213 of Maywood Colony No. 24, as the same is filed in the office of the county recorder of the County of Tehama, State of California, April 23, 1900 in Book B of maps at page 46.

Excepting therefrom all oil, gas and minerals, as excepted in the deed form Geraldine E. Kretsinger, as executor of the estate of Josiah T. Kretsinger, decease, recorded November 13, 1991, in Book 1347, page 83, officials records.

Parcel Seven: (Portion of APN 87–310–02)

The east half of the northeast quarter and the east half of the west half of the northeast quarter of section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances, lying in or under said land, as reserved in the deed from Charles Merlin Morgan, also known as Charles M. Morgan and as C.M. Morgan, and Mary Jean Morgan, his wife, recorded October 21, 1976 in Book 698, page 72, official records.

Parcel Eight: (Portion of APN 87–310–02)

The west half of lots 2 and 7 of Elmore Co-operative Colony, also described as the west half of the west half of the northeast quarter of Section 7; and lot 10 of Elmore Co-operative Colony, also described as the northwest quarter of the southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances, lying in or under said land, as reserved in the deed from Charles Merlin Morgan, also known as Charles M. Morgan and as C.M. Morgan, and Mary Jean Morgan, his wife, recorded October 21, 1976 in Book 698, page 72, official records.

Parcel Nine: (APN 87–310–08)

The southeast quarter of the southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian (also referred to as lot 16 of Elmore Cooperative Colony in Section 7, Township 23 north, Range 3 west).

Parcel Ten: (APN 87–310–06)

North half of the northeast quarter of southeast quarter of Section 7, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Parcel Eleven: (APN 87–310–10)

The north one-half of Section 8 in Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying in or under said land, as reserved in deed from Charles Merlin Morgan, et ux, recorded October 21, 1976 in Book 698, page 69, official records.

Parcel Twelve: (APN 87–210–17, 18 & 20)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 28°14′38″ west a distance of 1049.89 feet to a point on the south line of ''Parcel A'' which is the true point of beginning of this description, thence south 90°00′00″ east a distance of 487.43 feet, thence due north a distance of 331.64 feet, thence north 02°54′08″ west a distance of 650.42 feet to a railroad spike set along the westerly side of the existing access road, thence south 62°36′00″ west a distance of 763.01 feet to an iron pipe monument, thence south 22°05′06″ west a distance of 944.25 feet to an iron pipe monument, thence south 32°31′22″ east a distance of 101.77 feet to a point on an existing fence line, thence north 57°36′52″ east a distance of 202.01 feet along said fence line, thence 70°24′17″ east along said fence a distance of 57.07 feet, thence north 55°46′08″ east a distance of 361.49 feet to the true point of beginning of this description.

Parcel Thirteen (APN 87–210–22)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 41°48′03″ west a distance of 11.54 feet to the southwest corner of the ''Fly Pen Parcel'' which is the true point of beginning of this description, thence north 00°47′25″ east a distance of 406.28 feet to the northwest corner of the ''Fly Pen Parcel'', thence north 87°45′48″ east a distance of 420.05 feet to the northeast corner of the ''Fly Pen Parcel'', thence south 00°47′25″ west a distance of 406.28 feet to the southeast corner of the ''Fly Pen Parcel'', thence south 87°45′48″ west a distance of 420.05 feet to the true point of beginning of this description.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133 official records.

Parcel Fourteen (APN 87–210–23)

Beginning at the southwest corner of Section 5, Township 23 north, Range 3 west, thence north 79°55′10″ east a distance of 1892.35 feet to the southwest corner of the ''Dam & Spillway Parcel'' which is the true point of beginning of this description, thence north 06°44′50″ east a distance of 516.20 feet to a point lying in the lake which is partially encompassed by the ''Dam & Spillway Parcel'', thence north 17°00′36″ west a distance of 514.96 feet to the northwest corner of the ''Dam & Spillway Parcel'' which point lies along the south side of an existing access road and fence, thence north 89°25′25″ east a distance of 851.69 feet more or less to the mid-section line of Section 5, Township 23 north, Range 3 west, which point is also the northeast corner of the ''Dam & Spillway Parcel'', thence south 00°03′59″ west along the said mid-section line a distance of 1021.58 feet more or less to the southeast corner of the ''Dam & Spillway Parcel'', thence north 89°23′44″ west a distance of 762.87 feet more or less to the true point of beginning of this description.

Excepting therefrom a life estate in and to all oil, gas and mineral rights as reserved by Nola Fay Smith in deed recorded December 24, 1971 in Book 581, page 133, official records.

Parcel Fifteen: (APN 87–280–15)

The southwest quarter of the northwest quarter of the southeast quarter of Section Four (4), Township Twenty-Three (23) north, Range Three (3) west Mount Diablo Meridian.

Excepting therefrom all oil, gas and minerals as excepted Myrna B. Henze, surviving joint tenant, in deed recorded november 13, 1998 as instrument No. 15549, official records of Tehama County.

Parcel Sixteen: (APN 87–280–08)

The west half of the east half of the northwest quarter of the northwest quarter of southeast quarter of Section 4, Township 23 north, Range 3 west, Mount Diablo Meridian, according to the official plat thereof.

Parcel Seventeen: (APN 87–280–29)

All that portion of the south half of the northeast quarter of the southeast quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof, lying west of the lands conveyed to the State of California in deed recorded November 25, 1964 in Book 462, page 96, official records.

Parcel Eighteen: (APN 87–280–20)

The west half of the northwest quarter of the southwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Nineteen: (APN 87–210–11)

The southeast quarter of Section 5, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom an undivided ½ interest in and to all oil, gas and mineral rights for a period of 20 years from the recording date of that certain deed from Wayne S. Junkin, a widower, to C. Leroy Myers, a married man, recorded November 15, 1976 in Book 699, page 597, official records.

Parcel Twenty: (APN 87–280–18)

The southeast quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-One: (APN 87–280–06)

The south one-half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Also excepting therefrom an undivided ½ interest in and to all oil, gas, minerals and other hydrocarbon substances as reserved by Fred L. Dietz, et ux, in deed recorded October 26, 1959 in Book 358, page 597, official records.

Parcel Twenty-Two: (APN 87–280–32 & 33)

The east half of the southwest quarter of the southwest quarter; southeast quarter of the southwest quarter and all that portion of the south half of the southeast quarter lying westerly of that certain parcel of land deeded to the State of California by deed dated May 14, 1964, recorded September 23, 1964 in Book 458, page 750, official records. All of the above described property being in Section 4, Township 23 North, Range 3 West,

Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom one-half of all oil, gas, petroleum and other hydrocarbon substances and minerals, as reserved in deed from Samuel H. Smith, et ux, to Chris Lorenson, dated January 20, 1943, recorded November 20, 1943 in Book 142, page 247, official records.

Also excepting therefrom one-half of all oil, gas, minerals and other hydrocarbon substances, as reserved in the deed from Adolph Feusi, et ux, to Charles W. Reed, et al, dated January 14, 1966, recorded January 19, 1966 in Book 481, page 352, official records.

Parcel Twenty-Three (APN 87–280–31)

The southwest quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom the west 130 feet of the south 150 feet.

Parcel Twenty-Four: (APN 87–280–17)

The northeast quarter of the west half of the west half of the south half of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Five: (APN 87–280–14)

The southeast quarter of the northwest quarter of the southeast quarter of section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Six: (APN 87–280–04)

The north half of the north half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Seven: (APN 87–280–05)

The south half of the north half of the northeast quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Parcel Twenty-Eight: (APN 87–280–01)

The north half of the north half of the northwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas and minerals as reserved by Tunstall P. Baylor and Ollie S. Baylor, husband and wife, in the deed recorded February 17, 1954, in book 259, page 30, Official records of Tehama County.

Parcel Twenty-Nine: (APN 87–280–03)

The south one-half of the northwest quarter of the southwest quarter and the south one-half of the north one-half of the northwest quarter of the southwest quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom all oil, gas and minerals as reserved by Tunstall P. Baylor and Ollie S. Baylor, Husband and wife, in the deed recorded February 17, 1954, in book 259, page 30, Official records of Tehama County.

Parcel Thirty: (APN 87–230–11 & 87–280–07)

The south one-half of lot 5 in block 216 of Maywood Colony No. 24, as the same is shown on the map filed in the office of the county recorder of the County of Tehama, State of California, April 23, 1990, in book B of maps at page 46.

The west one-half of the northwest quarter of the northwest quarter of the southeast quarter of Section 4, Township 23 North, Range 3 West, Mount Diablo Meridian, according to the official plat thereof.

Excepting therefrom the above described property, an undivided one-half interest in and to all oil, gas minerals, and other hydrocarbon substances as reserved in the deed from Fred L. Dietz and Grace E. Dietz, husband and wife, to Jack R. Wood and Ardean M. Wood, husband and wife, as joint tenants, dated October 6, 1959 and recorded October 29, 1959 in book 359, official records at page 93, records of Tehama County.

Parcel Thirty-One (APN 87–310–11)

The South One-Half of Section 8 in Township 23 North, Range 3 west, Mount Diablo Meridian, according to the official plat thereof. (The Southwest Quarter of said Section 8 is also known as lots 69, 70, 71, 72, 73, 74, 75, 76, 85, 86, 87, 88, 89, 90, 91, 92, 101, 102, 103, 104, 105, 106, 107, 108, 117, 118, 119, 120, 121, 122, 123 and 124, as the same are so designated and delineated upon that certain map entitled: ''Plat of Elmore Colony, 5 Acre Subdivisions, being Southwest ¼ Section No. 8, in Township No. 23 north, Range No. 3 west, Mount Diablo Meridian, Tehama County, California'', filed in the Tehama County Recorder's Office, May 20, 1889 in Book A of maps at page 9.)

Excepting therefrom all oil, gas and mineral rights, as excepted in the deed from James WM. (Mike) Morgan, Jr., to A & K Cattle Company, a California corporation, Recorded August 25, 1998 in Book 1813, page 92, official records.

Containing 262.46 acres, more or less, located within Tehama County, California. Further described as follows:

Located in the Unincorporated Area

All that portion of the north one-half of Section 9, Township 23 north, Range 3 west, Mount Diablo Meridian, lying west of the west line of that parcel acquired by the State of California by final order of condemnation recorded December 16, 1966 in Book 494, page 281, Official Records of Tehama County.

Excepting Therefrom a 840/1160ths Interest in and to all gas, oil, hydrocarbons, minerals and fissionable materials in and under the above described land, pursuant to that certain agreement by and between James WM. Morgan, Robert Earl Morgan, George Merlin Morgan and Charles Merlyn Morgan, Recorded June 9, 1960, in Book 371, page 443, and that certain agreement by and between James WM. Morgan, Robert Earl Morgan, George Merlin Morgan and Charles Merlyn Morgan, Recorded April 14, 1966, in Book 484, page 624, Official Records of Tehama County.

Dated: November 30, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–31027 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Amendment to Approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians of Oregon and the State of Oregon, which was executed on November 17, 2000.

**DATES:** This action is effective December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 27, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–31025 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Amendment to Tribal-State Compact.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department

of the Interior, through his delegated authority, has approved the Amended Tribal-State Compact for Regulation of Class III Gaming between the Coquille Indian Tribe and the State of Oregon which was executed on November 15, 2000.

**DATES:** This action is effective December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 27, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–31026 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–040–01–1410–00; AA–49285]**

### Realty Action; Termination of Classification and Opening Order: Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** This notice terminates a Small Tract Classification and opens certain lands near Port Moller, Alaska, that were classified for small tract lease under the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended. This action would allow the land to be conveyed to the State of Alaska if such land is otherwise available.

**EFFECTIVE DATE:** December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathy A. Stubbs, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507; telephone number 907–267–1284.

**SUPPLEMENTARY INFORMATION:** Classification Order No. 386–NC dated June 1, 1961, segregated the lands from all forms of appropriation under the public land laws, including location under the mining laws, except as to application under the mineral leasing laws and the Small Tract Act. The Small Tract Act was repealed by section 702 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701). Accordingly the classification is not longer applicable.

1. Pursuant to the regulations contained in 43 CFR 2091.7–1(b)(2), at 9 a.m. on December 6, 2000, Classification Order No. 386–NC dated June 1, 1961, is hereby terminated insofar as if affects the following described land:

**Seward Meridian, Alaska**

A–049285

T. 48 S., R. 72 W., (surveyed)
Tract A.

The area described contains 5 acres in Port Moller, Alaska.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1995), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this notice in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

**Stuart Hirsh,**

*Acting Field Manager.*

[FR Doc. 00–31004 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–056–1430-ES; N–60030]**

### Notice of Realty Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23, 1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a high school.

**Mount Diablo Meridian, Nevada**

T. 23 S., R. 61 E.,
Sec. 9, SW¼NE¼SW¼, SE¼NW¼SW¼, NE¼SW¼SW¼, NW¼SE¼SW¼.

Containing 40.0 acres, more or less, located near Haven Street and Dale Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. Nev-055893 under the Act of February 15, 1901 (43 USC 959).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a high school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a high school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 22, 2000.

**Cheryl Ruffridge,**

*Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 00–31008 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–056–1430–ES; N–41568–38]**

## Notice of Realty Action: Transfer of Title

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Title Transfer of Recreation or Public Purpose Patent # 27–96–0002.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada, was patented to the Clark County School District on November 27, 1995 under the Recreation and Public Purpose Act for the Silverado High School. The Clark County Fire Department requests 2.5 acres of the patented land upon which to construct Fire Station 38. The land has been examined and found suitable for transfer under the provisions of the Federal Land Policy and Management Act (43 CFR 2741.6).

**Mount Diablo Meridian, Nevada**

T. 22 S., R. 61 E.,
Sec. 23, NE¼SE¼SE¼NW¼.

Containing 2.5 acres, more or less, located at Serene Avenue and Spencer Street.

The land is not required for any federal purpose. The title transfer is consistent with current Bureau planning for this area and would be in the public interest. The transfer will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the land will continue to be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391, 43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for power line purposes which have been granted to Nevada Power Company by right-of-way number N–15291 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed title transfer to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

*Application Comments:* Interested parties may submit comments regarding the application as to whether the BLM followed proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a fire station. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The lands will not be offered for title transfer until 60 days from the date of publication in the **Federal Register**.

Dated: November 29, 2000.

**Rex Wells,**

*Assistant Field Manager, Las Vegas, NV.*

[FR Doc. 00–31009 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–056–1430–ES; N–66782]**

## Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855 and on July 23,1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for an elementary school.

**Mount Diablo Meridian, Nevada**

Being a portion of Lot 1, sec. 13, T. 19 S., R. 60 E., more particularly described as follows:

Commencing at the northeast one sixteenth (NE¹⁄₁₆) corner of section 13, point also being the Point of Beginning: Thence North 00°16′52″, a distance of 670.0 feet; thence south 84°45′05″ west, a distance of 816.0 feet; thence south 00°16′54″ west, a distance of 670.0 feet; thence north 84°45′05″ east, a distance of 816.51 feet to the Point of Beginning. Containing 12.5 acres, more or less, located at Grand Teton Drive and Whispering Sands Drive.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV or by calling (702) 647–5088.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act,

leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for an elementary school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 29, 2000.

**Rex Wells,**

*Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 00–31010 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–HC–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 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 December 21, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**Arkansas**

*Dallas County*

Marianna Commercial Historic District, (Civil War Commemorative Sculpture MPS), Portions of Chestnut, Liberty, East Columbia, Mississippi, Poplar, Main, Court and Church Sts., Marianna, 00001559

**California**

*Los Angeles County*

Cooper Arms, 455 E. Ocean Blvd., Long Beach, 00001538

**Connecticut**

*Litchfield County*

Bryan, Roderick, House, 867 Linkfield Rd., Watertown, 00001563

*Middlesex County*

Villa Bella Vista, 7 Old Depot Rd., Chester, 00001560

*New Haven County*

Burgis II, Thomas, House, 85 Boston St., Guilford, 00001562

*New London County*

Brewster Homestead, 306 Preston Rd., Griswold, 00001561

**Florida**

*Lee County*

Whidden's Marina, (Lee County MPS) 190 First St. E, Boca Grande, 00001539

**Georgia**

*Toombs County*

Garbutt, Robert and Missouri, House, 700 W. Liberty St., Lyons, 00001564

**Indiana**

*Clark County*

Work, John, House and Mill Site, Address Restricted, Charlestown, 00001546

*Dearborn County*

Vance—Tousey House, 508 W. High St., Lawrenceburg, 00001547

*Decatur County*

Harris, Bright B., House, 413 N. Franklin St., Greensburg, 00001545

*Jefferson County*

St. Stephen's African Methodist Episcopal Church, 220 W. Main St., Hanover, 00001544

*Lake County*

Monon Park Dancing Pavillion, 13701 Lauerman St., Cedar Lake, 00001540

*Morgan County*

Lamb's Creek Bridge, Jct. of Lamb's Creek and Old IN 67 W, Martinsville, 00001541

*Rush County*

Rush County Bridge No. 188, Cty. Rd. 150 W over Little Flatrock River, Milroy, 00001542

*St. Joseph County*

Muessel—Drewry's Brewery, 1408 Elwood Ave., South Bend, 00001543

**Missouri**

*Jackson County*

Crossroads Historic Freight District, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS)

Roughly bounded by Southwest Blvd., W. 20th St., Baltimore Ave., W 22nd St., and Broadway, Kansas City, 00001565

*Madison County*

Madison County Courthouse, 1 Courthouse Sq., Fredericktown, 00001548

*Scott County*

Sikeston St. Louis, Iron Mountain and Southern Railway Depot, Front St., bet. Scott and New Madrid Sts., Sikeston, 00001549

*St. Louis Independent City*

Buehler, William, House, 2610 Tennessee Ave., St. Louis (Independent City), 00001550

**Montana**

*Cascade County*

Masonic Temple, 821 Central Ave., Great Falls, 00001568

*Gallatin County*

Methodist Episcopal Church, 116 Cedar St., Third Forks, 00001566

*Golden Valley County*

Slayton Mercantile Co., 23 Main St., Lavina, 00001567

**New York**

*Columbia County*

Columbia Turnpike—West Tollhouse, NY 23B, Greenport, 00001571

*North Carolina*

Avery County Linville Falls Tavern, (former), 25 Rock House Ln., Linville Falls, 00001554

*Brunswick County*

Oak Island Life Saving Station, 217 Caswell Beach Rd., Caswell Beach, 00001553

*Forsyth County*

Middleton House, 2721 Robinhood Rd., Winston-Salem, 00001552

*Lee County*

Lee County Training School, (Lee County MPS) 806 S. Vance St., Sanford, 00001551

*Macon County*

Cowes-West's Mill Historic District, (Macon County MPS) Address Restricted, Franklin, 00001569

*Wake County*

Mordecai Place Historic District (Boundary Increase), 208 Delway St., Raleigh, 00001570

**Ohio**

*Clark County*

Tecumseh Building, 34 W. High St., Springfield, 00001555

*Cuyahoga County*

Shaker Village Historic District (Boundary Increase), Roughly bounded by Lomond Blvd., Lytel Rd., Scottsdale Blvd., and Lindholm Rd., Shaker Heights, 00001557

*Summit County*

Ozmun, Isaac and Maria, Farmstead, 6928 Olde Eight Rd., Boston Heights, 00001556

**Oklahoma**

*Cleveland County*

Cleveland County Courthouse, 200 S. Peters Ave., Norman, 00001580
Norman City Park New Deal Resources, Jct. of Daws St. and Webster Ave., Norman, 00001572
Norman Public Library, 329 S. Peters Ave., Norman, 00001581
United States Post Office—Norman, 207 E. Gray St., Norman, 00001573

**Oklahoma**

*Grady County*

Chickasha Milling Company Elevator, (Grain Storage and Processing Facilities in Western Oklahoma MPS) 100 Choctaw Ave., Chickasha, 00001574

*Lincoln County*

Mensch, William Alfred, Building, 218 W. Main St., Stroud, 00001576

*Pawnee County*

Pawnee Agency and Boarding School Historic District, Pawnee Tribal Reserve, E of Pawnee, roughly bounded by Morris Rd., following Harrison St. and Agency Rd., Pawnee, 00001577

*Payne County*

Perkins Downtown Historic District, 100 Blk. of Main St. bounded by Stumbo and Thomas Sts., Perkins, 00001578

*Pottawatomie County*

Bell Street Historic District, Along N. Bell St., from East Ninth to East Main, Shawnee, 00001579

**Texas**

*Denton County*

Denton County Courthouse Square Historic District, (Denton, Texas MPS) Area bounded by Pecan, Austin, Walnut, and Cedar Sts., Denton, 00001582

**Utah**

*Box Elder County*

Glover, William and Nettie, House, (Brigham City MPS) 106 West 100 North, Brigham, 00001587
Jenson, Nels and Minnie, House, (Brigham City MPS) 136 East 100 South, Brigham City, 00001588
Knudson, Jonathan and Jennie, House, (Brigham City MPS) 48 South 100 East, Brigham City, 00001583

*Rich County*

Woodruff Stake House, (Tithing Offices and Granaries of the Mormon Church TR) 50 South Main, Woodruff, 00001586

*Salt Lake County*

Sweet Candy Company Building, (Salt Lake City Business District MRA) 224 South 200 West, Salt Lake City, 00001584
Webster School, 2700 South 9180 West, Magna, 00001585

**Wisconsin**

*Milwaukee County*

West Side Commercial Historic District, Roughly, W. Wisconsin Ave., N. Third St., N. Plankinton Ave., and N. Second Ave., Milwaukee, 00001590

*Ozaukee County*

Day, Isham, House, 11312 N. Cedarburg Rd., Mequon, 00001558

**Wyoming**

*Fremont County*

Wind River Agency Blockhouse, Address Restricted, Ft. Washakie, 00001589

A request for REMOVAL has been made for the following Resource:

**South Dakota**

*McPherson County*

Eureka Lutheran College 301 4th St. Eureka, 90001643

[FR Doc. 00–30996 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a) (3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 37 cultural items are 1 pair of scissors, 8 bracelets, 7 thimbles, 2 knives, 1 glass ball, 2 horn spoons, 1 powder horn, 2 fragments of a powder horn, 1 bone whistle, 1 bone scraper, 2 stones, 1 gunflint, 1 beaded necklace, 6 beaded ornaments and loose beads, and yellow paint.

Prior to 1870, human remains and associated funerary objects were collected by Assistant Surgeon A. I. Comfort, U.S. Army, from graves at the Old Ponca Agency, Knox County, NE. Surgeon Comfort donated the human remains and the associated funerary objects to the Army Medical Museum (forerunner of the National Museum of Health and Medicine), Washington, DC, in 1870. Surgeon Comfort's letter of transmittal to the Army Medical Museum identified the graves as culturally affiliated with the Ponca.

The human remains were later transferred to the Smithsonian Institution, Washington, DC, by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1874, a beaded necklace from one of these graves was transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

In 1876, one powder horn and one gun flint from one of these graves were transferred to the Peabody Museum of Archaeology and Ethnology by the Army Medical Museum. Surgeon Comfort described the gunflint as a ''wahintka'' or ''skin scraper.''

Prior to 1869, human remains and associated funerary objects were collected by Acting Assistant Surgeon G. P. Hachenberg, U.S. Army, from a grave near the Old Ponca Agency, Knox County, NE. Surgeon Hachenberg donated the human remains and associated funerary objects to the Army Medical Museum in 1869. Museum records indicate that the grave was that of a Ponca woman.

The human remains were later transferred to the Smithsonian Institution by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1876, one pair of scissors and one glass ball were transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

Prior to 1871, human remains and associated funerary objects were removed by Assistant Surgeon George N. Hopkins, U.S. Army, from a grave near the Old Ponca Agency, Knox County, NE. Surgeon Hopkins donated these human remains and associated funerary objects to the Army Medical Museum in April of 1871. Surgeon Hopkins' letter of transmittal to the Army Medical Museum identifies the grave as Ponca.

The human remains were later transferred to the Smithsonian Institution by the Army Medical Museum. The National Museum of Natural History repatriated these human remains to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998.

In 1876, 32 cultural items including 8 bracelets, 2 horn spoons, 1 bone scraper, 2 butcher knives, 7 thimbles, 1 bone whistle, 6 beaded ornaments and loose beads, 2 stones, 2 fragments of a powder horn, and yellow paint were transferred to the Peabody Museum of Archaeology and Ethnology from the Army Medical Museum.

Because the human remains associated with these cultural items were repatriated to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska in 1998, these cultural items are considered unassociated funerary objects.

Based on the above information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d) (2) (ii), the 37 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska.

This notice has been sent to officials of the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before January 5, 2001. Repatriation of these cultural items to the Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: November 17, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources, Stewardship, and Partnerships.*

[FR Doc. 00–30997 Filed 12–5–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of information collection under review; application for travel document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannnot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of this information.

If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725—17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Ms. Lauren Wittenberg, Department of Justice Desk Officer, 202–395–4718. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Wittenberg at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS request written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for sixty days until February 5, 2001. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Suite 4034, Washington, DC 20536; 202–514–3291.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–131. Adjudications Division, immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by permanent or conditional residents, refugees or asylees and aliens abroad seeking to apply for a travel document to lawfully reenter the United States or be paroled for humanitarian purposes into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 453,318 responses at 55 minutes (.90 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the*

*collection:* 407,986 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: November 30, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Immigration and Naturalization Service, Department of Justice.*

[FR Doc. 00–30958 Filed 12–5–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

November 28, 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) 693–4127 of by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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), within 30 days from the date of this publication in the **Federal Register.**

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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Mine Rescue Teams: Arrangements for Emergency Medical Assistance and Arrangements for Transportation for Injured Persons.

*OMB Number:* 1219–0078.

*Affected Public:* Business or other for-profit.

| Cite/ reference | Total respondents | Frequency | Total annual responses | Average time per response (hours) | Burden (hours) |
|---|---|---|---|---|---|
| 49.2 | 1,145 | On occasion | 147 | 1.00 | 146 |
| 49.3 & 4 | 10 | On occasion | 10 | 2.00 | 20 |
| 49.6 | 520 | Bimonthly | 28,080 | 0.31 | 8,517 |
| 49.7 | 520 | Annually | 3,120 | 2.13 | 6,630 |
| 49.8 | 260 | Annually | 14,456 | 0.60 | 8,723 |
| 49.9 | 1,145 | On occasion | 147 | 2.00 | 293 |
| 75.1713–1 | 921 | On occasion | 116 | 2.00 | 233 |
| 77.1702 | 1,601 | On occasion | 206 | 2.00 | 413 |
| Totals | 6,122 | | 46,282 | 0.54 | 24,975 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/ maintaining systems or purchasing services):* $468,080.

*Description:* Operators of small and remote underground mines or underground mines operating under special mining conditions may apply for permission to provide alternative mine rescue capability. The intent of this requirement is that such mines establish the best possible rescue response available given their unique circumstances.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–31041 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–43–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

November 29, 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) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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), within 30 days from the date of this publication in the **Federal Register**.

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.

*Type of Review:* New collection.

*Agency:* Employment and Training Administration.

*Title:* O*NET Data Collection Program.

*OMB Number:* 1205–0New.

*Affected Public:* Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal government;

*Frequency:* Survey to be repeated every three to five years, depending on the occupation.

*Number of Respondents:* 51,300.

*Estimated Time Per Respondent:* 1 hour, 35 minutes per participating business, 30 minutes per employee respondent.

*Total Burden Hours:* 23,305.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintainng systems or purchasing services):* $0.

*Description:* The O*NET Data Collection Program will yield information on worker and job characteristics to populate the O*NET (Occupational Information Network) database. O*NET is replacing the obsolete Dictionary of Occupational Titles, and will be used for a wide range of purposes related to employment and training program administration, career counseling and development, training curriculum design, Employment Service job orders and referrals, development of Labor Market Information, rehabilitation and disability programs, and private sector human resources functions. The survey will include contacting businesses to gain their cooperation, and collecting information from employees of cooperating businesses. For a small number of occupations, professional associations will be contacted to gain their cooperation in providing member lists for surveying. Subject matter experts will also be surveyed in a limited number of cases.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment and Training Administration.

*Title:* Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for Services to Youth, Services to Adults, Services to Dislocated Workers, Local Area Administration, Statewide Activities (15% of Total Federal Allotment), and Statewide Rapid Response.

*OMB Number:* 1205–0408.

*Frequency:* Quarterly.

*Affected Public:* States, Local, or Tribal governments; Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 56.

DOL–ETA Reporting Burden for WIA Title I–B States

| Requirements | PY 1999 | PY 2000 | PY 2001 | PY 2002 |
|---|---|---|---|---|
| Number of Reports Per Entity Per Quarter | 3 | 3 | 3 | 3 |
| Total Number of Reports Per Entity Per Year | 12 | 12 | 12 | 12 |
| Number of Hours Required Per Report | 1 | 1 | 1 | 1 |
| Total Number of Hours Required for Reporting Per Entity Per Year | 12 | 12 | 12 | 12 |
| Number of Entities Reporting | 16 | 56 | 56 | 56 |
| Total Number of Hours Required for Reporting Burden Per Year | 192 | 672 | 672 | 672 |

**Note:** Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, *i.e.,* PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years. DOL estimates 16 entities reporting for PY 1999. Beginning in PY 2000, all entities (56) are required to report under WIA.

*Total Burden Cost (capital/start):* $0.

*Total Burden Cost (operating/maintaining):* $0.

*Description:* This Information Collection Request (ICR) incorporates the necessary reporting instructions for States to report financial data related to Workforce Investment Act programs to DOL. These instructions have been prepared in response to the requirement set forth at 20 CFR 667.300, for DOL to issue financial reporting instructions to States; and to ensure State compliance with the reporting elements contained in the Workforce Investment Act (WIA) of 1998, Subtitle E, Sec. 185. The WIA requires quarterly financial reports, which shall include information identifying all program and activity costs by cost category in accordance with generally accepted accounting principles and by year of appropriation. The WIA also requires reporting any income or profits earned, including such income or profits earned by sub-recipients and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. In addition, WIA requires the reporting of costs only as administrative or programmatic, with computerization/technology costs not included in the administrative cost limit calculation.

The Standard Form 269 has been modified to provide the six reporting formats which will be used for WIA reporting. Separate reporting formats will be needed for: (1) Local area youth, (2) local area adults, (3) local area dislocated workers, (4) local administration, (5) Statewide activities (15% total Federal allotment), and (6) Statewide rapid response.

ETA has designed software that contains the data elements required for each of the reporting formats. Instructions corresponding to the required data elements have been provided to the States in the software package. Transmittal of this data will occur on a quarterly basis via the Internet.

The data collection and reporting requirements requested by the Employment and Training Administration are necessary to effectively manage and evaluate the financial status of the WIA program, to measure regulatory compliance, to prepare required reports to Congress, and for audit purposes.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–31042 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

November 30, 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) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 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), within 30 days from the date of this publication in the **Federal Register**.

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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Noise.

*OMB Number:* 1218–0048.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 379,512.

*Number of Annual Responses:* 17,982,447.

*Estimated Time Per Response:* Varies from 2-minutes to notify employees when noise exposure exceeds the 8-hour time-weight average of 85 decibels to 1-hour for employees in small establishments to take audiometric examinations.

*Total Burden Hours:* 5,175,645.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services:* $98,815,961.

*Description:* The purpose of the occupational noise exposure Standard (29 CFR 1910.95) and its information collection requirements are to provide protection to employees from adverse health effects associated with occupational exposure to noise. The Standard requires employers to establish and maintain accurate records of employee exposure to noise and audiometric testing performed in compliance to this Standard.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Access to Employee Exposure and Medical Records.

*OMB Number:* 1218–0065.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 763,734.

*Number of Annual Responses:* 5,030,002.

*Estimated Time Per Response:* 8-minutes.

*Total Burden Hours:* 610,136.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services:* $10.00.

*Description:* 29 CFR 1910.1020 requires employers to preserve and provide access to records associated with employee exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment, and prevention of occupational illness and disease.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Formaldehyde.

*OMB Number:* 1218–0145.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 113,150.

*Number of Annual Responses:* 1,569,329.

*Estimated Time Per Response:* Varies from 5-minutes for an employer to maintain exposure-monitoring and medical records for each employee, to 1-hour for an employee to receive a medical exam.

*Total Burden Hours:* 591,079.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $56,531,328.

*Description:* The Formaldehyde Standard (29 CFR 1910.1048) and its information collection requirements are designed to provide protection for employees from the adverse health effects associated with occupational exposure to formaldehyde. The Standard requires employers to monitor employee exposure and provide notification to employees of their exposure. Employers are required to make available medical surveillance to employees. Employers are also required to communicate hazards associated with exposure to formaldehyde through signs, labels, and employee training.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Definition and Requirements for a Nationally Recognized Testing Laboratory.

*OMB Number:* 1218–0147.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 58.

*Number of Annual Responses:* 58.

*Estimated Time Per Response:* 23-hours.

*Total Burden Hours:* 1,345.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* A number of OSHA's standards require certain equipments to be ''tested'' (or ''approved'') by a ''nationally recognized testing laboratory'' (NRTL). Pursuant to 29 CFR 1910.7, an organization seeking to perform this testing (or approval) must be ''recognized'' by OSHA and must apply to the OSHA NRTL Program for recognition. Recognition is granted after OSHA determines that the organization meets certain requirements.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Bloodborne Pathogens.

*OMB Number:* 1218–0180.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 113,150.

*Number of Annual Responses:* 1,569,329.

*Estimated Time Per Response:* Varies from 1-minute to maintain in employee's training record, to 105-minutes for an employee to receive a Hepatitis B vaccination (HBV) and post-vaccination screening for the HBV.

*Total Burden Hours:* 12,178,601.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $30,415,000.

*Description:* The Bloodborne Pathogens Standard (29 CFR 1910.1030) is designed to prevent occupational exposure to bloodborne pathogens. The Standard's information collection requirements are used by employers to implement required protective actions. OSHA compliance officers will use some of the information for enforcement purposes.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Lead in Construction.

*OMB Number:* 1218–0189.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 147,073.

*Number of Annual Responses:* 6,155,640.

*Estimated Time Per Response:* Varies from 5-minutes for a supervisor to provide OSHA with written compliance plans, training-program materials, and other records during an inspection, to 2.44-hours for a supervisor to write a compliance plan.

*Total Burden Hours:* 1,697,383.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $69,083,073.

*Description:* 29 CFR 1926.62 requires employers to train employees about the hazards of lead, monitor employee exposure, provide surveillance and maintain accurate records of employee exposure. These records are used by employers, employees, physicians, and the Government to ensure that employees are not harmed by occupational exposure lead.

*Type of Review:* Extension of a currently approved collection

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Construction Fall Protection Plans and Records.

*OMB Number:* 1218–0197.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 100,000.

*Number of Annual Responses:* 100,000.

*Estimated Time Per Response:* Variable (5-minutes to certify a safety net; 1-hour to develop and write a fall-protection plan; and 5-minutes to certify training).

*Total Burden Hours:* 744,480.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The construction fall protection plan and certification records required by 29 CFR 1926.502 and the related training requirements required by 29 CFR 1926.503 are needed to help employees identify fall hazards and to know which protective measures are to be used in order to protect them from workplace fall hazards.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–31043 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance:

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 20th day of November, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 11/20/2000

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,321 | International Paper (Co.) | Lock Haven, PA | 11/01/2000 | Reprographic Paper. |
| 38,322 | Golden Northwest Aluminum (USWA) | The Dallas, OR | 11/03/2000 | Aluminum. |
| 38,323 | Winpak Films (Wkrs) | Senoia, GA | 10/27/2000 | Machine Operators, Packers, Inspectors. |
| 38,324 | Remacor (Wkrs) | West Pittsburg, PA | 10/29/2000 | Ground Magnesium. |

APPENDIX—PETITIONS INSTITUTED ON 11/20/2000—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,325 | Posies, Inc. (Co.) | Rockport, ME | 11/03/2000 | Children's Special Occasion Dresses. |
| 38,326 | Encore Textiles (Co.) | Monroe, NC | 10/31/2000 | Tee Shirts. |
| 38,327 | Irving Forest Products (PACE) | Ashland, ME | 11/07/2000 | Kiln Dried Lumber. |
| 38,328 | Staples, Inc. (Co.) | Canton, MI | 10/30/2000 | Sell Office Products. |
| 38,329 | Fashion Technologies (UNITE) | Hackensack, NJ | 10/27/2000 | Engraving and Screens Making. |
| 38,330 | Central Industries (Co.) | Greenwood, AR | 10/25/2000 | Electrical Wiring Harnesses. |
| 38,331 | Babyfair, Inc. (Wkrs) | Brooklyn, NY | 11/06/2000 | Infants and Children's Clothing. |
| 38,332 | Pronav Ship Management (Wkrs) | Greenwich, CT | 11/03/2000 | Natural Gas Transportation. |
| 38,333 | Smith and Wesson (Co.) | Springfield, MA | 11/02/2000 | Firearms. |
| 38,334 | General Magnetic (Co.) | Dallas, TX | 11/06/2000 | Ceramic Magnetics. |
| 38,335 | Victor Electric (Wire (IBEW) | Coventry, RI | 11/01/2000 | Electric Cordsets. |
| 38,336 | Dunham Bush (Wkrs) | Harrisonburg, VA | 11/06/2000 | Heating. |
| 38,337 | Norton Company (PACE) | Watervliet, NY | 11/06/2000 | Sandpaper. |
| 38,338 | Cooper Energy Services (Wkrs) | Mt. Vernon, OH | 11/06/2000 | Compressor Fralies and Cylinders. |
| 38,339 | Maytag (Co.) | Jefferson City, MO | 11/08/2000 | Wiring Harnesses for Appliances. |
| 38,340 | New Monarch Machine Tools (UAW) | Cortland, NY | 11/06/2000 | Vertical Machining Centers. |
| 38,341 | Caffall Bros. Forest Prod (Co.) | Wilsonville, OR | 11/07/2000 | Western Red Cedar Fencing Products. |
| 38,342 | Gulf States Steel (USWA) | Gadsden, AL | 11/07/2000 | Steel Plates, Coils. |
| 38,343 | United Steelworkers (USWA) | Gadsden, AL | 11/07/2000 | Steelworkers Union Office. |
| 38334 | Rockwell Automation (UE) | Milwaukee, WI | 11/01/2000 | Industrial Controls, Switches. |
| 38345 | General Time Corp. (Co.) | Athens, GA | 11/13/2000 | Keywound and Electric Analog Clocks. |

[FR Doc. 00–31035 Filed 12–05–00; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–38,065]**

### It's Personal, New York, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 2000, in response to a petition filed on August 22, 2000 on behalf of workers at It's Personal, New York, New York.

The Department of Labor has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 20th day of November, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31039 Filed 12–5–00; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of November, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 11/13/2000

| TA–W | Subject firm (Petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,296 | Kim Mark Hosiery Inc. (Comp) | Mount Airy, NC | 11/06/2000 | Hosiery. |
| 38,297 | Qwik Tool Manufacturing (Wrks) | Lexington, KY | 11/06/2000 | Automotive Parts. |
| 38,298 | JN Oil and Gas, Inc. (Comp) | Billings, MT | 10/20/2000 | Crude Oil and Natural Gas. |
| 38,299 | Originals Bi-Judy, Inc. (Comp) | Tolleson, AZ | 10/31/2000 | Baby Bedding. |
| 38,300 | ABB Westinghouse (Wrks) | Festus, MO | 10/17/2000 | Nuclear Fuel and Fuel Bundles. |

APPENDIX—PETITIONS INSTITUTED ON 11/13/2000—Continued

| TA–W | Subject firm (Petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,301 | York International (Wrks) | Elyria, OH | 10/24/2000 | Residential Heating and Cooling Products. |
| 38,302 | Ohpus Corp (Comp) | Florham Park, NJ | 10/25/2000 | Electronic Scales. |
| 38,303 | CMI Industries, Inc. (Wrks) | Geneva, AL | 10/27/2000 | Unfinished Cloth. |
| 38,304 | USR Optonix, Inc. (Comp) | Hackettstown, NJ | 10/24/2000 | Toner and Developer for Copy Machines. |
| 38,305 | Stora Enso North America (Comp) | Wisconsin Rapid, WI | 10/31/2000 | Paper. |
| 38,306 | Alstom Power (Comp) | Kings Mountain, NC | 11/06/2000 | Heat Recovery Steam Generators. |
| 38,307 | Progress Lighting (Wrks) | Cowpens, SC | 10/28/2000 | Light Fixtures. |
| 38,308 | Advanced Cast Products (USWA) | Meadville, PA | 10/25/2000 | Railroad Products, Truck Suspension. |
| 38,309 | Virogenetics Corp. (Wrks) | Troy, NY | 10/27/2000 | Biotech Research Facility. |
| 38,310 | ABC–NACO (BBF) | Ashland, WI | 10/24/2000 | Rail Track Switches. |
| 38,311 | Lightnin SPX Corp (Comp) | Wytheville, VA | 10/20/2000 | Industrial Mixing Equipment. |
| 38,312 | R and S Manufacturing (GMP) | West Chester, PA | 11/13/2000 | Electric Motors for Room Fans. |
| 38,313 | Winn Dixie (Wrks) | Garden City, SC | 10/30/2000 | Grocery Store. |
| 38,314 | International Security (Wrks) | Ogdensburg, NY | 10/30/2000 | Printing Ink. |
| 38,315 | DiBon Leather Goods (Wrks) | Hackensack, NJ | 10/20/2000 | Briefcases, Portfolios, Agendas, Handbags. |
| 38,316 | Bryant Grinder Corp. (UE) | Springfield, VT | 11/01/2000 | Internal/External Grinders. |
| 38,317 | Vanalco Aluminum (Wrks) | Vancouver, WA | 11/01/2000 | Aluminum. |
| 38,318 | Pyramid Mountain Lumber (Comp) | Seeley Lake, MT | 10/30/2000 | Kiln Dried Lumber. |
| 38,319 | Hit Apparel, Inc. (Comp) | Athens, TN | 10/13/2000 | Children's Pajamas. |
| 38,320 | American Baseball Cap (Wrks) | Friedens, PA | 10/30/2000 | Baseball Helmets. |

[FR Doc. 00–31040 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–38,195]**

### Nova Bus, Inc., Roswell, New Mexico; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was intitiated on October 10, 2000, in response to a petition which was filed by the company on behalf of workers at Nova Bus, Inc., Roswell, New Mexico.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of November 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31038 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–38,022; Celanese Acetate, Cel River Plant, Rock Hill, SC.*

*TA–W–38,204; Williamette Industries, Custom Products Div., Albany, OR.*

*TA–W–37,911; Pillowtex Corp., Rocky Mount, NC.*

*TA–W–38,211; ADM Milling Co., Milwaukee, WI.*

*TA–W–38,145; Ceragraphic, Inc., Hackensack, NJ.*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–38,213; General Electric Industrial Systems, Motor Div., Erie, PA.*

*TA–W–37,919; Guess?, Inc., Los Angeles, CA.*

*TA–W–38,223; GE Capital Card Service, Cincinnati, OH.*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–38,031; Wabash Automotive, Fort Worth, TX.*

*TA–W–38,006; Rohm and Haas Co., Philadelphia, PA.*

*TA–W–38,239; Airtherm LLC, Forrest City, AR.*

*TA–W–37,998; Eaton Corp., Vickers Industrial and Mobile Div., Omaha, NE.*

*TA–W–37,933; Scott Logging, Inc., Bend, OR.*

*TA–W–38,010; Key Tronic Corp., Spokane, WA.*

*TA–W–38,076; Union Tools, Frankfort, NY.*

*TA–W–37,962; Boise Cascade Corp., Timber and Wood Products Div., Independence, OR.*

*TA–W–38,238; Royal Oak Enterprises, Inc., Paris, AR.*

*TA–W–38,168; Anchor Dye and Finishing Co. A Div. of Amicale Industries, Inc., Philadelphia, PA.*

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,999; Savane International Corp., El Paso, TX

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

*TA–W–38,290; Sara Campbell Ltd, Boston, MA: October 20, 1999.*

*TA–W–38,136; Fruit of The Loom, Texas, Inc., Gitano Dept, Harlingen, TX: September 11, 1999.*

*TA–W–37,887; Avent, Inc., Tucson, AZ: April 8, 2000.*

*TA–W–38,173; Ethicon Endo-Surgery, Inc., Including Leased Workers of Kelly Services, Cincinnati, OH; September 20, 1999.*

*TA–W–37,965; Telex Communication, Inc., Sevierville, TN: July 24, 1999.*

*TA–W–38,159; Exel USA, Inc., Fiberspar Sports, West Wareham, MA: September 15, 1999.*

*TA–W–38,105; Briggs Industries, Inc., Abingdon, IL: September 7, 1999.*

*TA–W–38,245, Leapwood Apparel, Adamsville, TN: October 11, 1999.*

*TA–W–38,025; Jenny K. Fashions, Meriden, CT: May 11, 1999.*

*TA–W–37,179; Wexco Corp., Lynchburg, VA: September 22, 1999.*

*TA–W–37,926; Philips Consumer Electronics—Industrial Operation, Life Test and Qualify Control Dept, Greenville, TN: July 13, 1999.*

*TA–W–37,809; Aly-Wear, Inc., Ephrata, PA: April 12, 1999.*

*TA–W–37,994; Central Point Lumber, a/k/a Tree Source, Central Point, OR; August 10, 1999.*

*TA–W–38,220; Avery Dennison, Writing Instruments Div., Crossville, TN: September 29, 1999.*

*TA–W–37,858; Shape Global Technology, Inc., Kennebunk, ME: June 28, 1999.*

*TA–W–38,009; Roseburg Forest Products, Co., Big Log Sawmill, Dillard, OR: August 16, 1999.*

*TA–W–37,831; Cross Huller North America, Div. of Thyseeenrupp, Fraser, MI: June 14, 1999.*

*TA–W–38,119; John Dusenberg Co., Randolph, NJ: September 11, 1999.*

*TA–W–38,143 & A; Copley Pharmaceutical, Inc., Canton, MA and Dedham, MA: September 13, 1999.*

*TA–W–38,042; EJ Footwear LLC, Franklin, TN: August 22, 1999.*

*TA–W–38,130; Elberton Manufacturing Co., Inc., Elberton, GA: September 8, 1999.*

*TA–W–37,929; B.F. Goodrich Aerospace (Coltec), Landing Gear Div., Eulese, TX: July 14, 1999.*

*TA–W–38,057; Corlair Corp., Piedmont, MO: August 24, 1999.*

*TA–W–38,124; A.D.H. Manufacturing Corp., Etowah, TN: September 8, 1999.*

*TA–W–38,102; McDowell Manufacturing, DuBois, PA: September 11, 1999.*

*TA–W–37,942; Unique Finishing, Inc., Wrightsville, GA: July 19, 1999.*

*TA–W–38,038; Guilford Mill, Inc., Fishman Facility, Greensboro, NC; August 7, 1999.*

*TA–W–38,272; Renfro Corp., Finishing Dept, Pulaski, VA: October 13, 1999.*

*TA–W–38,070; Sharp Manufacturing Co. of America, Memphis, TN: September 11, 1999.*

*TA–W–38,234 & A; Northside Manufacturing, Philipsburg, PA and Streamline Fashions Manufacturing Co., Philipsburg, PA: October 6, 1999.*

*TA–W–38,004 & A; Duluth Engineering and Manufacturing/Pitman, Duluth, MN and Grandview, MO: August 11, 1999.*

*TA–W–38,190; Amscan, Inc., Lumart Div., Brooklyn, NY: September 22, 1999.*

*TA–W–38,176; Tyco Electronics, TDI Batteries Div., Romeoville, IL: September 8, 1999.*

*TA–W–38,296; Kim Mark Hosiery, Mount Airy, NC: July 14, 1999.*

*TA–W–38,235; Universal Auto Radiator Mfg Co., Pittsburgh, PA: October 10, 1999.*

*TA–W–38,016; Leoni Wiring Systems, Tucson, AZ: August 10, 1999.*

*TA–W–37,953; & A, B; Stanley Knitting Mills (South Main Street Plant), Oakboro, NC, Richfield, NC and Stanley Knitting Mills, Sales Corp., New York: August 4, 1999.*

*TA–W–38,030; Phoenix Medical Technology, Inc., Andrews, SC: August 17, 1999.*

*TA–W–37,980; Fulton Apparel, Inc., South Pittsburg, TN: July 27, 1999.*

*TA–W–38,273; McNairy Shirtworks, Adamsville, TN: October 17, 1999.*

*TA–W–38,273; Stanley Tools, Eagle Square Plant, Shaftsbury, VT: August 8, 1999.*

*TA–W–38,255; Still-Man Heating Product, Cookeville, TN: October 18, 1999.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of November, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof; (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations.

There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–04282; Norman Barnes & Co., Inc., Arlington, WA*
*NAFTA–TAA–04210; Royal Oak Enterprises, Inc., Paris, AR*
*NAFTA–TAA–03904; APV Americas, Lake Mills, WI*
*NAFTA–TAA–04120; Corlair Corp., Piedmont, MO*
*NAFTA–TAA–04025; Kim Mark Hosiery, Inc., Mount Airy, NC*
*NAFTA–TAA–04149; Owik Tool Manufacturing, Magna Div., Lexington, KY*
*NAFTA–TAA–04131; Burlington Resources Oil and Gas, Mid Continent–Rockies, Sidney, MT*
*NAFTA–TAA–04194; Wabash Automotive, Ft. Worth, TX*
*NAFTA–TAA–04226; Airtherm, LLC, Forrest City, AR*
*NAFTA–TAA–04169; Hoh River Timber, Omak, WA*
*NAFTA–TAA–04162; Potlatch Corp., Wook Products, Div: Jaype Mill, Pierce, ID*
*NAFTA–TAA–04167; Roseboro, Lumber, Dimension Lumber Div., Springfield, OR*
*NAFTA–TAA–04179; GP Timber, Central Point, OR*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–04197; General Electric Industrial Systems, Motors Div., Erie, PA.*
*NAFTA–TAA–04239; DR Rent, LLC, Klamath Falls, OR.*
*NAFTA–TAA–04177; Derby Industries, LLC, Lexington, KY.*
*NAFTA–TAA–04243; Pronav Ship Management, Inc., Greenwich, CT.*

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determinations NAFTA–TAA**

*NAFTA–TAA–04088; Leoni Wiring Systems, Tucson, AZ: August 10, 1999.*
*NAFTA–TAA–04223; Amscan, Inc., Lumart Div., Brooklyn, NY: September 22, 1999.*
*NAFTA–TAA–04061 & A, B; Stanley Knitting Mills (South Main Street Plant), Oakboro, NC, Richfield, NC and Stanley Knitting Mils Sales Corp., New York, NY: August 4, 1999.*
*NAFTA–TAA–04032; Philips Consumer Electronics—Industrial Operations, Life Test and Quality Control Department, Greenville, TN: July 13, 1999.*
*NAFTA–TAA–04168; Tyco Electronics TDI Batteries Div., Tomeoville, IL: September 21, 1999.*
*NAFTA–TAA–04160; Quality Veneer and Lumber, Aberdeen, WA: September 12, 1999.*
*NAFTA–TAA–04111; Hayden Industrial Products LLC, Corona, CA August 22, 1999.*
*NAFTA–TAA–04245; Still-Man Heating Products, Cookeville, TN: October 18, 1999.*
*NAFTA–TAA–4296; Mulox, Inc., Macon, GA: August 30, 1999.*
*NAFTA–TAA–04257; A.O. Smith Electrical Products Do., Paoli Plant, Paoli, IN: October 20, 1999.*
*NAFTA–TAA–04260; 3M, Scientific Angler, a/k/a Streamworks, a/k/a D.B. Dun, Boise, ID: October 19, 1999.*
*NAFTA–TAA–04251; Authentic Fitness Corp., Cutting Operation, Bell, CA: September 16, 1999.*
*NAFTA–TAA–04211; Tyco Electronics, Clinton Township, MI: October 4, 1999.*
*NAFTA–TAA–04076; Reynolds Metals Co., Troutdale, OR: August 9, 1999.*

I hereby certify that the aforementioned determinations were issued during the month of November, 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 27, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31036 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–04101]**

### The Garden Grow Co., Lilly Miller Packet Seed Division, Wilsonville, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated November 2, 2000, the petitioner requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for NAFTA-Transitional Adjustment Assistance. The denial notice was signed on October 6, 2000 and published in the **Federal Register** on November 1, 2000 (65 FR 65331).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner requested that the Department reassess the findings that The Garden Company has *not* shifted production to Canada, nor has the Division of Lilly Miller. No new information concerning the decision was provided by the petitioner for reconsideration.

The Department's denial of NAFTA-TAA was based on the findings that creiteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. Findings of the investigation showed that workers of The Garden Grow Company, Lilly Miller Packet Seed Division, Wilsonville, Oregon packaged seed in paper envelopes. The Department's denial of NAFTA-TAA for workers of the subject firm was based on the finding that there was no shift of production from the Wilsonville, Oregon production facility to Mexico or Canada. Sales and production were relatively flat. The workers were separated because the subject division was sold to a competitor who is shifting the work to another domestic location.

Although, the company has shifted some production (plastic seed bottle production) to Canada, no shifts in production have occurred during the relevant period.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of November 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31037 Filed 12–5–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10901 and D–10902, et al.]**

### Proposed Exemptions; IRAs for Eldon Nysether and Mark Nysether (the IRAs)

**AGENCY:** Pension and Welfare Benefits Administration, Labor

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *Attention:* Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**IRAs for Eldon Nysether and Mark Nysether (the IRAs)**

**Located in Seattle, Washington**

[Application Nos. D–10901 and D–10902]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRAs of their interests in certain improved real property (the Property) to Sea-Land Development Corporation (Sea-Land), a disqualified person with respect to the IRAs,[1] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the IRAs pay no commissions nor other expenses relating to the sale; and (3) the sale price received by the IRAs equals the Property's fair market value, as of the date of the sale, as established by a qualified, independent appraiser.

*Summary of Facts and Representations*

1. The two IRAs are individual retirement accounts, as described under section 408(a) of the Code. One IRA was established by Eldon Nysether, the sole participant. The other IRA was established by Mark Nysether, the sole participant. As of November 8, 2000, the IRAs had total assets of $684,124.26 and $684,124.26, respectively. The custodian of both IRAs is The Commerce Bank of Washington, located in Seattle, Washington.

2. The Property consists of a currently unoccupied one-story commercial office building with approximately 20,300 sq. ft. on a 2.17 acre lot. It is located in Skagit Industrial Park, 500 Metcalf Street, Sedro Woolley, Washington. The adjacent parcel to the west of the Property is already owned by Sea-Land. The adjacent parcel is improved with a number of buildings that, together, form an industrial complex.

3. The Property is held as equal interests by each IRA. Except for a small amount of cash, the Property consists of the IRAs' sole asset. According to the applicants, the Property was originally acquired as an investment by the Sea-Dog Corporation 401(k) Profit Sharing Plan (the Sea-Dog Plan) from unrelated parties in 1993 for a total cash purchase price of $275,000.[2] The IRAs obtained the Property in 1997 in a rollover of assets as distributions to which the Nysethers were each entitled as participants in the Sea-Dog Plan, when they were informed by the Sea-First Bank that it would no longer permit real estate to be held in 401(k) plan accounts at the bank. At that time, the Property had an appraised value of $550,000. The Sea-Dog Corporation, in which Mark Nysether has a 34.28% ownership interest and his father Eldon has a 28.15% ownership interest, is a sister company of Sea-Land, the proposed purchaser of the Property. Mark Nysether is also a 50% owner of Sea-Land.[3]

[1] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[2] The applicants represent that, at the same time the Sea-Dog Plan purchased the Property, Sea-Land purchased the adjacent industrial complex. In this regard, the Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Sea-Dog Plan violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[3] The applicants state that Sea-Land is a ''disqualified person'' with respect to the IRA for Mark Nysether. Section 4975(e)(2)(G) of the Code defines the term ''disqualified person'' to include, in pertinent part, a corporation of which (or in

The applicants represent that, as of May 5, 2000, the IRAs had received gross rental income, since acquiring the Property, in the following amounts: $26,433.21 to the IRA for Eldon Nysether and $26,433.22 to the IRA for Mark Nysether. In regard to certain expenses relating to the Property, the IRAs, as of May 5, 2000, had each paid $6,921.63 in taxes and $2,506.00 for insurance. The applicants further represent that the Property has not been leased to, nor used by, by a disqualified person with respect to the IRAs, at any time since being acquired by the IRAs.[4]

4. The Property has been appraised by David Parsons & Associates, Inc., qualified, independent appraisers located in Mount Vernon, Washington. Mr. Parsons, M.A.I., a general appraiser certified in the State of Washington, and Roger Lindblom, Associate Appraiser, estimated that the fair market value of the Property was $1,334,000, as of July 11, 2000. In their report, Messrs. Parsons and Lindblom state that they utilized all three valuation approaches: Cost, Sales Comparison, and Income, with greater consideration given to the latter two approaches. They state that the Property is a sound strucure, but the interior needs to be completely refurbished. The Property is zoned CBD, which represents the prime commercial designation for small-to-moderate scale commercial activities in the area where the Property is located.

Further, in a subsequent letter dated November 3, 2000, Mr. Parsons states that, in making an appraisal of the Property, he was aware that the adjacent industrial complex is already owned by Sea-Land, which rents out its buildings to approximately 19 different tenants. Mr. Parsons states that, because most of these tenants operate businesses with small offices, there is not deemed a specific demand for office space from this complex that may affect the value of the subject Property. Thus, according to Mr. Parsons, no premium would be associated with its purchase by Sea-Land.

5. The applicants propose that Sea-Land purchase the Property from the IRAs for an amount in cash equal to the fair market value of the Property ($1,334,000 as of July 11, 2000), as of the date of the sale, based upon an updated, independent appraisal. The IRAs will pay no commissions nor other expenses relating to the sale. Each IRA will receive one-half of the sale proceeds, in accordance with their one-half ownership interests in the Property.

The applicants represent that the proposed exemption is in the best interests of the IRAs because the sale will allow the IRAs an opportunity to divest their respective portfolios of an illiquid asset. In addition, the sale proceeds received by each IRA will be reinvested in other assets that will increase the diversification of the IRAs' assets and facilitate the payment of retirement benefits.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons:

(a) the sale will be a one-time transaction for cash; (b) the IRAs will pay no commissions nor other expenses relating to the sale; (c) the sale price received by the IRAs will equal the Property's fair market value, as of the date of the sale, as established by a qualified, independent appraiser; and (d) the sale will allow the IRAs an opportunity to divest their respective portfolios of an illiquid asset, increase the diversification of the IRAs' assets by reinvesting the proceeds of the sale in other assets, and facilitate the payment of retirement benefits.

*Notice To Interested Persons*

Because the Nysethers are the sole participants in their IRAs, it has been determined that there is no need to distribute the notice of proposed exemption to other interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

which) 50 percent or more of the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation is owned directly or indirectly, or held by, a fiduciary of a plan.

The applicants state that Sea-Land is also a ''disqualified person'' with respect to the IRA for Eldon Nysether, Mark's father, despite Eldon's having no direct ownership interest in Sea-Land. Section 4975(e)(4) of the Code, in part, provides that, for purposes of paragraph (2)(G)(i), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), the attribution rules under the Code.

[4] The Department notes that any lease or use of the Property by a ''disqualified person,'' as defined in section 4975(e)(2) of the Code, would be a separate prohibited transaction under section 4975(c)(1)(D) of the Code.

**ING Barings LLC,**

**ING Institutional Trust Company and Affiliates**

**Located in New York, New York**

[Exemption Application No.: D–10908]

*Proposed Exemption*

Section I—Transactions

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[5] If the exemption is granted, effective as of the date of the publication of the proposed exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) the lending of securities to:

(1) ING Barings LLC (ING);

(2) the London branch (ING Bank London) of ING Bank N.V. or any successor in interest bank which is subject to the laws of the United Kingdom and the Netherlands;

(3) ING Barings Limited (ING London);

(4) ING Baring Securities (Japan) Limited (ING Japan); and

(5) any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan;[6] by employee benefit plans, including commingled investment funds holding assets of such plans (the Client Plan(s)), for which in connection with securities lending activities, an affiliate of the ING Borrowers, the ING Institutional Trust Company (ING Institutional), its corporate successors, or any foreign or domestic affiliate of ING,[7] acts as a securities lending agent (or sub-agent) or as a directed trustee or custodian for such Client Plans under either of two

[5] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[6] ING, ING Bank London or any successor in interest bank which is subject to the laws of the United Kingdom and the Netherlands, ING London, ING Japan, and any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan are referred to herein collectively as ING Borrowers or individually as ING Borrower.

[7] ING Institutional, its corporate successors, or any foreign or domestic affiliate of ING are referred to herein collectively as IITC.

securities lending arrangements referred to herein as Plan A and Plan B; and

(b) the receipt of compensation by IITC in connection with securities lending transactions, provided that for all transactions described above the conditions, as set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Client Plan, neither the ING Borrowers nor IITC has or exercises discretionary authority or control with respect to the investment of the assets of such Client Plan involved in the transaction (other than with respect to the investment of cash collateral after the securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including any decisions concerning such Client Plan's acquisition or disposition of securities available for securities lending transactions;

(b) With regard to:

(1) Plan A, under which IITC lends securities of a Client Plan to an ING Borrower in either an agency or sub-agency capacity, such arrangement is approved in advance by a fiduciary of the Client Plan (the Client Plan Fiduciary) that is independent of IITC and the ING Borrower and is negotiated by IITC, which acts as a liaison between the lender and the borrower to facilitate the securities lending transaction.[8]

(2) Plan B, under which an ING Borrower directly negotiates an agreement with the Client Plan Fiduciary, including a Client Plan for which IITC provides services with respect to the portfolio of securities to be loaned, pursuant to an exclusive borrowing arrangement (an Exclusive Borrowing Arrangement), such Client Plan Fiduciary is independent of both the ING Borrower and IITC, and IITC does not participate in any such negotiations.

(c) Before a Client Plan participates in a securities lending program with respect to Plan A and before any loan of securities to an ING Borrower pursuant to Plan A is affected, a Client Plan Fiduciary that is independent of IITC and the ING Borrower must have:

(1) Authorized and approved a securities lending authorization agreement with IITC (the Agency Agreement), where IITC is acting as the direct securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where IITC is lending securities under a sub-agency arrangement with a primary lending agent; and

(3) Approved the general terms of the securities loan agreement (the Basic Loan Agreement) between such Client Plan and the ING Borrower, the specific terms of which are negotiated and entered into by IITC.

(d) The terms of each loan of securities by a Client Plan to an ING Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties;

(e) A Client Plan may terminate a securities lending agency (or sub-agency) agreement under Plan A or an Exclusive Borrowing Arrangement under Plan B at any time without penalty on five (5) business days notice, whereupon the ING Borrower shall deliver securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Client Plan within:

(1) the customary delivery period for such securities;

(2) five (5) business days; or

(3) the time negotiated for such delivery by the Client Plan and the ING Borrower, whichever is less.

(f) The Client Plan (or another custodian designated to act on behalf of the Client Plan) receives from the ING Borrower (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to such ING Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable letters of credit issued by a United States Bank, other than IITC or the ING Borrowers, or any combination thereof, or other collateral permitted under PTCE 81–6 (as it may be amended or superseded);

(g) The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan is initially at least 102 percent (102%) of the market value of the loaned securities. The applicable Basic Loan Agreement gives the Client Plan a continuing security interest in and an lien on the collateral. The level of collateral is monitored daily either by IITC under Plan A or IITC or other designee of the Client Plan under Plan B. If the market value of the collateral, on the close of trading on a business day, is less than 100 percent (100%) of the market value of the loaned securities at the close of business on that day, the ING Borrower is required to deliver by the close of business on the next day, sufficient additional collateral such that the market value of the collateral will again equal 102 percent (102%).

(h) With regard to:

(1) Plan A, prior to a Client Plan entering into a Basic Loan Agreement, the ING Borrower will furnish its most recent available audited and unaudited statements to IITC, which, in turn, will provide such statements to the Client Plan before such Client Plan approves of the terms of the Basic Loan Agreement. The Basic Loan Agreement contains a requirement that the applicable ING Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, IITC will not make any further loans to the ING Borrower, unless an independent Client Plan Fiduciary is provided notice of any material change and approves the loan in view of the changed financial condition;

(2) Plan B, prior to a Client Plan entering into an Exclusive Borrowing Arrangement, the ING Borrower will furnish its most recent available audited and unaudited statements to the Client Plan before the Client Plan elects to enter into such agreement. The Exclusive Borrowing Arrangement contains a requirement that the ING Borrower must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements;

(i) In return for lending securities, the Client Plan either:

(1) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan; or

(2) has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to the ING Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(j) All the procedures regarding the securities lending activities will at a minimum conform to the applicable

[8] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than IITC, beyond that provided pursuant to Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), and Prohibited Transaction Class Exemption 82–63 (PTCE 82–63)(47 FR 14804, April 6, 1982).

provisions of PTCE 81–6 and PTCE 82–63 as well as the applicable banking laws of the United Kingdom and the Netherlands and securities laws of the United States or the United Kingdom or Japan;

(k) ING Institutional agrees to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) for any transactions covered by this exemption with ING Borrowers so that the Client Plans do not have to litigate in the case of ING Borrowers in foreign jurisdictions or sue ING Borrowers to realize on the indemnification. Such indemnification by ING Institutional is against any and all reasonably foreseeable damages, losses, liabilities, costs, and expenses (including attorney's fees) which the Client Plans may incur or suffer, arising from any impermissible use by ING Borrowers of the loaned securities or from an event of default arising from ING Borrowers' failing to deliver loaned securities in accordance with the applicable Basic Loan Agreement or otherwise failing to comply with the terms of such agreement, except to the extent that such losses or damages are caused by the Client Plans' own negligence.

(1) If any event of default occurs, ING Institutional promptly and at its own expense (subject to rights of subrogation in the collateral and against such borrower), will purchase or cause to be purchased, for the account of the Client Plans, securities identical to the borrowed securities (or their equivalent as discussed above). If the collateral is insufficient to accomplish such purchase, ING Institutional will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision). Alternatively, if such replacement securities cannot be obtained on the open market, ING Institutional will pay the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral on the date of the borrower's breach of its obligation to return the loaned securities.

(2) If, however, the event of default is caused by the ING Borrower's failure to return securities within a designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

(l) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, and interest payments on the loaned securities, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(m) Prior to any Client Plan's approval of the lending of its securities to any ING Borrower, a copy of the notice of proposed exemption and a copy of the final exemption, if granted, will be provided to such Client Plan.

(n) Each Client Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information described below in representation number 19 of the Summary of Facts and Representations, so that an independent Client Plan Fiduciary may monitor such transactions with the ING Borrowers.

(o) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the ING Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the ING Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations, or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the ING Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such plan or an employee organization whose members are covered by such plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(A) Has full investment responsibility with respect to Client Plan assets invested therein; and

(B) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.)

(p) With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers, unless the Client Plan has entered into an Exclusive Borrowing Arrangement with the ING Borrowers.

(q) In addition to the above, all loans involving Foreign Borrowers, as defined in Section III (c), below, must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a bank which is regulated by both the Dutch Central Bank (De Nederlandsche Bank or DNB) and the Financial Services Authority (FSA) of the United Kingdom or must be a registered broker-dealer subject to regulation by either the Securities and Futures Authority of the United Kingdom (the SFA) or the Ministry of Finance (the MOF) and the Tokyo Stock Exchange .

(2) Such Foreign Borrower must be in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities and Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or United States dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and the situs of the securities lending agreements (either the Basic Loan Agreement under Plan A or the Exclusive Borrowing Arrangement

under Plan B) is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering a transaction involving a Foreign Borrower, the applicable Foreign Borrower must—

(A) Agree to submit to the jurisdiction of the United States;

(B) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) Consent to service of process on the Process Agent; and

(D) Agree that enforcement by a Client Plan of the indemnity provided by ING Institutional will occur in the United States courts;

(r) ING maintains or causes to be maintained within the United States for a period of six (6) years from the date of each securities lending transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in Section II (s)(1) below to determine whether the conditions of this exemption, if granted, have been met; except that—

(1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of ING or the other ING Borrowers, the records are lost or destroyed prior to the end of the six year period; and

(2) no party in interest with respect to an employee benefit plan, other than ING or the other ING Borrowers, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by Section II(s)(1), below.

(s)(1) Except as provided in subparagraph (2) of this Section II(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section II(r), above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC);

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan, or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B)-(D) of Section II(s)(1) shall be authorized to examine trade secrets of ING or the other ING Borrowers, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption,

(a) The term ''affiliate'' of another person shall include:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, employee, or relative (as defined in section 3(15) of the Act) of such other person or any partner in such person; and

(3) Any corporation or partnership of which such other person is an officer, director, employee or in which such person is a partner.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Foreign Borrower or Foreign Borrowers'' means: (1) ING Bank London or any successor in interest bank subject to the laws of the United Kingdom and the Netherlands; (2) ING London; (3) ING Japan; and (4) any broker-dealer that, now or in the future, is an affiliate of ING which is subject to regulation under the laws of the United States or the United Kingdom or Japan.

*Summary of Facts and Representations*

1. The ING Groep N.V. (the ING Groep) is a publicly held Dutch corporation with slightly under one billion shares outstanding as of December 31, 1998. American Depository Receipts of the ING Groep are traded on the New York Stock Exchange.[9] In addition, the shares of the ING Groep are traded on the Amsterdam Stock Exchange.

2. ING Barings LLC (ING), a Delaware limited liability corporation, is an indirect wholly-owned subsidiary of the ING Groep. ING is a full service investment firm serving institutional, corporate, and high net worth individual clients. ING is registered with the SEC and is a member of all principal securities exchanges in the United States, including, but not limited to, the New York Stock Exchange, the American Stock Exchange, as well as the National Association of Securities Dealers, Inc. As of March 31, 2000, ING had $17.746 billion in assets.

ING, acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs, or re-lends these securities to brokerage firms and other entities. The average amount of securities on loan to ING during the month of March 2000, was approximately $11.356 billion, and the average amount of securities being lent by ING during March 2000, was approximately $7.986 billion. It is represented that in making securities loans, ING carefully reviews the credit-worthiness of its counter-parties and conforms to the requirements of Regulation T, as promulgated by the U.S. Federal Reserve Board.

3. ING Institutional, an indirect wholly-owned subsidiary of the ING Groep and an affiliate of ING, is organized as a limited purpose trust company licensed by the New York State Banking Department. ING Institutional has its principal executive offices in New York, New York. ING Institutional acts as a securities lending agent and provides securities lending services for Client Plans and other entities. ING Institutional may also be retained from time to time by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary securities lending agents. As a securities lending sub-agent, ING Institutional's role (i.e., negotiating the terms of the loans with borrowers pursuant to a client-approved form of a loan agreement, and monitoring receipt of, and marking-to-market, the required collateral) parallels those under the securities lending transactions for which ING Institutional acts as a primary lending agent on behalf of its own clients.

4. ING Bank N.V., a direct subsidiary of the ING Groep, is a Dutch incorporated public limited liability company regulated by the DNB. As of December 31, 1999, ING Bank N.V. had total assets of approximately EUR 349,618 million and shareholder's equity of approximately EUR 13,212 million. ING Bank London, a branch of ING Bank N.V., is authorized to conduct a banking business in the United Kingdom.

5. ING London, an indirect subsidiary of the ING Groep, is an English company registered with the Registrar of Companies for England and Wales. ING

[9] As such, shares of the ING Groep are registered pursuant to section 12(b) of the 1934 Act.

London is also an international investment banking organization. As of December 31, 1999, ING London had total assets of approximately 2,595,477,000 pounds. ING London is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer.

6. ING Japan is an indirect subsidiary of the ING Groep. As of December 31, 1999, ING Japan had total assets of approximately 39 billion yen. ING Japan is a Japanese company authorized to conduct an investment business in Japan as a broker-dealer.

7. Brokers and other entities, including banks, often need to borrow a particular security for certain periods of time in order to satisfy deliveries in cases of short sales, or in cases where a broker, bank, or other entity fails to receive securities which it in turn is required to deliver. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer, a bank, or other entity to earn a fee in addition to any interest, dividends, or other distributions paid on the loaned securities. The lender generally requires that the security loans be fully collateralized. In this regard, the collateral usually is cash or high quality liquid securities issued by the U.S. Government, Federal Agency obligations, or certain bank letters of credit. When the collateral is cash, the lender generally invests the cash and rebates a portion of the earnings on such cash collateral to the borrower. The fee received by the lender is the difference between the earnings on the cash collateral and the amount of the rebate that is paid to the borrower. When a securities loan is collateralized with U.S. Government or Federal Agency securities or with letters of credit issued by a bank, the fee is paid directly by the borrower to the lender.

Institutional investors often utilize the services of an agent in performing securities lending transactions. The lending agent is also paid a fee for its services that may be a percentage of the income earned by the investor from lending its securities. The essential functions which define a securities lending agent are identifying appropriate borrowers of securities and negotiating loan terms with the borrowers. Certain services that are ancillary to securities lending include monitoring the level of collateral, the value of loaned securities, and in some instances, investing the collateral.

8. The applicants request an individual administrative exemption for the lending of securities owned by Client Plans, with respect to which IITC acts as a directed trustee or custodian and/or securities lending agent (or sub-agent),[10] to the ING Borrowers following disclosure to the Client Plans of IITC's affiliation with such ING Borrowers, under either of two arrangements—described as Plan A and Plan B. The applicants also request an individual administrative exemption for the receipt of compensation by IITC in connection with such securities lending transactions. Neither IITC nor the ING Borrowers will have discretionary authority or control over the Client Plans' decisions concerning the acquisition or disposition of securities available for lending. However, because IITC under the Plan A arrangement and the ING Borrowers under the Plan B arrangement (as discussed further below), will have discretion with respect to whether there is a loan of the Client Plans' securities to the ING Borrowers, the lending of securities to the ING Borrowers under such arrangements may be outside the scope of relief provided by PTCE 81–6 and PTCE 82–63.[11]

*Plan A*

9. As noted above, the agreement by IITC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. In the case of the Plan A arrangement, where IITC acts as the securities lending agent, the Client Plan Fiduciary who is independent of IITC and the ING Borrower will sign the Agency Agreement with IITC before the Client Plan participates in IITC's securities lending program. Further, the Client Plan and IITC will agree to an arrangement under which IITC will be compensated for its services as the lending agent prior to the commencement of any lending activity. The Client Plan may terminate the Agency Agreement at any time, without penalty, on no more than five (5) business days' notice.

The Agency Agreement will, among other things, describe the operation of the securities lending program, prescribe the form of the securities loan agreement to be entered into on behalf of the Client Plan with the borrowers, and identify the securities which are available to be lent, the required collateral, and daily marking-to-market. The Agency Agreement will set forth the basis and rate for IITC's compensation from the Client Plan for the performance of securities lending services. Further, the Agency Agreement will contain provisions regarding designation by the Client Plan of a list of permissible borrowers, including the ING Borrowers. Specifically, the Client Plan will acknowledge that the ING Borrowers are affiliates of IITC. Pursuant to the Agency Agreement, IITC will represent to each Client Plan that each loan made to ING Borrowers on behalf of such Client Plan will be at market rates, and in no event will such rates be less favorable to the Client Plan than a loan of such securities made at the same time and under the same circumstances to an unaffiliated borrower.

10. When IITC is lending securities under a sub-agency arrangement, before the Client Plan participates in the securities lending program, the primary lending agent will enter into the Primary Lending Agreement with a Client Plan Fiduciary, who is independent of such primary lending agent, IITC, and the ING Borrowers. The Client Plan may terminate the Primary Lending Agreement at any time, without penalty, on no more than five (5) business days' notice.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement described above, relating to the description of the operation of the securities lending program, the use of an approved form of securities loan agreement, the identification of securities which are available to be lent, the required collateral, daily marking-to-market, and the provision of a list of approved borrowers, including the ING Borrowers. The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including IITC, to facilitate its performance of securities lending agency functions.

Where IITC is to act as a sub-agent, the Primary Lending Agreement will expressly disclose such fact. The Primary Lending Agreement will also set forth the basis and rate for the

[10] Future references to IITC's performance of services as securities lending agent should be deemed to include its parallel performance as a securities lending sub-agent, and references to the Client Plans should be deemed to include those plans for which IITC is acting as a sub-agent with respect to securities lending activities, unless otherwise specifically indicated or by the context of reference.

[11] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTCE 82–63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTCE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

primary lending agent's compensation from the Client Plan for the performance of securities lending services. Further, such agreement will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s), including IITC, that the primary lending agent retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with IITC under which the primary lending agent will retain and authorize IITC, as sub-agent, to lend securities of the primary lending agent's clients, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of securities loan agreement will be the same as that approved by the Client Plan Fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (which will include the ING Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Sub-Agency Agreement will contain provisions that are in substance comparable to those which would appear in the Agency Agreement in situations where IITC is the primary lending agent. In this regard, IITC will make the same representation in the Sub-Agency Agreement with respect to arm's-length dealings with the ING Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for IITC's compensation to be paid by the primary lending agent.

11. IITC, acting as securities lending agent for the Client Plans, will negotiate the Basic Loan Agreement and any modifications thereto with the ING Borrowers on behalf of the Client Plans. The Basic Loan Agreement will set forth the basis for compensation to the Client Plan for lending securities to the ING Borrowers under each category of collateral. The Basic Loan Agreement will also contain a requirement that the ING Borrowers must pay all transfer fees and transfer taxes related to the security loans. An independent Client Plan Fiduciary will approve the form of the Basic Loan Agreement before such fiduciary executes the Agency Agreement. Further, the Basic Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Client Plan's rights in the event of any default by the ING Borrowers.

12. Prior to making any loans under the Basic Loan Agreement, the ING Borrower will furnish to IITC (assuming IITC does not already possess such statements), its most recent available audited financial statements (and unaudited financial statements if more recent than such audited statements). IITC will, in turn, provide such statements to the Client Plan before the independent Client Plan Fiduciary is asked to approve the terms of the Basic Loan Agreement. The terms of the Basic Loan Agreement will contain a requirement that the ING Borrower must give prompt notice at the time of the loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, IITC will request that the independent Client Plan Fiduciary approve the loan in view of the changed financial condition.

13. Each time a Client Plan loans securities to an ING Borrower pursuant to the Basic Loan Agreement, such ING Borrower will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

14. To assure uniformity of treatment among borrowing brokers and to limit the discretion IITC would have in negotiating securities loans to the ING Borrowers, IITC will establish each day a written schedule of lending fees and rebate rates. In this regard, IITC will adopt minimum daily lending fees payable by each borrower, including ING Borrowers, to IITC on behalf of the Client Plans with respect to securities loans secured with collateral other than cash and will adopt maximum daily rebate rates payable to each borrower, including the ING Borrowers, with respect to securities loans secured with cash collateral. Loans to all borrowers, including ING Borrowers, of a given security on any day will be made at rebate rates or lending fees on the relevant daily schedule or at rebate rates or lending fees that may be more advantageous to the Client Plans. In no case will the loans be made to ING Borrowers at rebate rates or lending fees less advantageous to the Client Plan than those on the schedule.

IITC will negotiate on behalf of a Client Plan rebate rates for loans secured by cash collateral payable to each borrower, including ING Borrowers. When a loan of securities by a Client Plan is collateralized with cash, IITC, at the Client Plan's direction, will either transfer such cash collateral to the Client Plan or its designated agent for investment. Alternatively, IITC may invest the cash in short-term securities or interest-bearing accounts. In either case, IITC will on behalf of the Client Plan rebate a portion of the earnings on the cash collateral to the ING Borrowers. The rebate rates, which are established for loans secured by cash collateral made by the Client Plans, will take into account the potential demand for the loaned securities, the applicable benchmark cost of funds indices (typically, the U.S. Federal Funds Rate established by the Federal Reserve System (Federal Funds), the overnight ''REPO'' [12] rate, or the like), and the anticipated investment return on overnight investments which are permitted by the Client Plan Fiduciary. For example, where cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable ''ask'' quotation therefor. For example, where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the investment return (assuming no investment default). With respect to any loan to ING Borrowers, IITC will not knowingly negotiate a rebate rate with respect to such loan which over the anticipated term of the loan would produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where IITC has investment discretion over the cash collateral). IITC represents that the written rebate rate established daily for cash collateral under loans negotiated with the ING Borrowers will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction.

Where the collateral consists of obligations other than cash, the ING Borrowers will pay a fee to the Client Plan based on the value of the loaned

[12] An overnight ''REPO'' is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

securities. The lending fees, which are established with respect to loans made by the Client Plans collateralized by other than cash, will be set daily to reflect conditions as influenced by potential market demand. For loans secured by collateral other than cash, the applicable lending fee in respect of any outstanding loan will be reviewed daily by IITC for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to any calendar quarter, at least 50 percent (50%) of the securities loans negotiated on behalf of the Client Plans will be to borrowers not affiliated with IITC, and so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, the applicants state that loans to the ING Borrowers should result in a competitive rate of income to the lending Client Plan. At all times, IITC will effect loans in a prudent and diversified manner.

Prior to lending any securities to the ING Borrowers on behalf of the Client Plan, IITC will disclose the method for determining minimum daily lending fees and maximum daily rebate rates, as described above, to an independent Client Plan Fiduciary for approval. The method of determining the actual daily securities lending rates (fees and rebates), the minimum lending fees payable by the ING Borrowers and the maximum rebate payable to the ING Borrowers, will be specified in an exhibit attached to the Agency Agreement to be executed between the independent Client Plan Fiduciary and IITC in cases where IITC is the direct securities lending agent.

15. If IITC reduces the lending fee or increases the rebate rate on any outstanding loan to an ING Borrower (except for any change resulting from a change in the value of any index with respect to which the fee or rebate is calculated), IITC, by the close of business on the date of such adjustment, shall provide the independent Client Plan Fiduciary with notice that IITC has adjusted such fee or rebate to such affiliated borrower, and that the Client Plan may terminate such loan at any time. IITC shall provide the independent Client Plan Fiduciary with such information as may reasonably be requested regarding such adjustment.

16. While IITC will normally lend securities to requesting borrowers on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowing brokers, in some cases it may not be possible to adhere to a ''first come, first served'' allocation. This can occur in instances when: (a) the credit limit established for such ''first in line'' borrower by IITC and/or the Client Plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by a particular Client Plan whose securities are sought to be borrowed; or (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different representatives of IITC at or about the same time with respect to the same security. In situations (a) and (b), above, loans would usually be effected with the ''second in line'' borrower. In situation (c), above, securities would be allocated as equitably as practicable among all eligible requesting borrowers.

17. IITC on behalf of a Client Plan will receive collateral from ING Borrowers by physical delivery, book entry in a U.S. securities depository, wire transfer, or similar means by the close of business on or before the day the loaned securities are delivered to such ING Borrowers. The collateral will consist of U.S. dollars, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable United States bank letters of credit issued by an entity other than the ING Borrowers or any affiliate thereof, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans).

The market value of the collateral on the close of business on the business day preceding the day the loaned securities are delivered to the ING Borrowers will be at least 102 percent (102%) of the then market value of the loaned securities. The Basic Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. IITC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%), IITC will require the ING Borrower to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent (102%).

18. Subject to the terms and conditions of the Agency Agreement (or the Primary Lending Agreement), IITC will invest and reinvest all or substantially all cash collateral in approved investments designated by the applicable Client Plan and identified on a schedule attached to the relevant agreement. All approved investments made by IITC will be for the sole account and risk of the applicable Client Plan. From time to time, the Client Plan may instruct IITC in writing not to make an approved investment with a certain counter-party, or through a particular financial institution or intermediary. Alternatively, the Client Plan may also retain the right to directly control the reinvestment of the cash collateral.

19. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. At the request of the Client Plan, such a report will be provided on a weekly or daily basis, rather than a monthly basis. Also, upon request of the Client Plan, IITC will provide the Client Plan with daily confirmations of securities lending transactions.

In order to provide the means for monitoring lending activity, rates on loans to the ING Borrowers compared with loans to other brokers, and the level of collateral on such loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding loans of securities to the ING Borrowers and to other borrowers. Further, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the ING Borrowers compared with the rates at which securities are loaned to other brokers. This statement will give each independent Client Plan Fiduciary information that can be compared to that contained in the daily rate schedule.

20. Under the Plan A arrangement and, in some instances, under the Plan B arrangement (see paragraph 21, below, for the types of lending services which may be provided to the Client Plans by IITC under Plan B arrangement), the Client Plan will pay a fee to IITC for providing lending services to the Client Plan, which will reduce the income earned by the Client Plan from lending its securities to the ING Borrowers. The Client Plan and IITC will agree in advance to this fee, which will represent a percentage of the income the Client Plan earns from its lending activities.

*Plan B*

21. With respect to Plan B, the ING Borrowers will directly negotiate an Exclusive Borrowing Arrangement with a fiduciary of a plan, including Client Plans for which IITC serves as directed trustee or custodian, where such fiduciary is independent of the ING Borrower and IITC. Under the Exclusive Borrowing Arrangement, the ING Borrower will have exclusive access for a specified period of time to borrow securities of the Client Plan pursuant to certain conditions. IITC will not participate in the negotiation of the Exclusive Borrowing Arrangement. The involvement of IITC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral, and investing or depositing any cash collateral and supplying the Client Plans with certain reports. The applicants represent that, under an Exclusive Borrowing Arrangement, neither the ING Borrower nor IITC will perform for the relevant Client Plan the functions which constitute the essential functions of a securities lending agent.

22. Upon delivery of loaned securities to the ING Borrower, IITC, or another custodian on behalf of the Client Plan, will receive from the ING Borrower on the same day by physical delivery, book entry in a U.S. securities depository, wire transfer, or similar means collateral consisting of U.S. dollars, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, irrevocable United States bank letters of credit issued by an entity other than the ING Borrowers, or any combination thereof, or other collateral permitted under PTCE 81–6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans).

The market value of the collateral at the close of business on the business day preceding the day the loaned securities are delivered to the ING Borrower will be at least 102 percent (102%) of the then market value of the loaned securities. IITC or such other custodian will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (100%) of that of the loaned securities, the ING Borrower will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent (102%) of the market value of the loaned securities. The ING Borrower or, in the case of some Client Plans, IITC, will provide a weekly report to the Client Plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the ING Borrower, and the aggregate market value of the collateral.

23. Before entering into an Exclusive Borrowing Arrangement, the ING Borrower will furnish to the Client Plan, if such plan does not already possess such statements, the most recent publicly available audited and unaudited statements of its financial condition, as well as any other publicly available information which the ING Borrower believes is necessary for the Client Plan to determine whether to enter into or renew the arrangement, and a copy of the final exemption, if granted, together with this proposed exemption. The Exclusive Borrowing Arrangement will contain a requirement that the ING Borrower must give prompt notice at the time of a loan of any material adverse changes in financial condition of the ING Borrower since the date of the most recently furnished financial statements. All the procedures under the Exclusive Borrowing Agreement will conform to the applicable provisions of PTCE 81–6 and PTCE 82–63 and will be in compliance with the applicable banking laws of the United Kingdom and the Netherlands, and the securities laws of the United States, the United Kingdom or Japan.

24. In exchange for the exclusive right to borrow certain securities from a Client Plan, an ING Borrower will pay such Client Plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the Exclusive Borrowing Arrangement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. A percentage may be established by reference to an objective formula. The ING Borrower and the independent Client Plan Fiduciary may agree that different fee arrangements will apply to different securities or different groups of securities. Any change in the rate paid to the Client Plan will require the written consent of the independent Client Plan Fiduciary. However, such Client Plan's consent will be presumed where the rate changes pursuant to an objective formula. In such instances, an independent Client Plan Fiduciary must be notified at least 24 hours in advance of the rate change, and the independent Client Plan Fiduciary must not object in writing to such change, prior to the effective date of the change. Under this fee arrangement, all earnings generated by the cash collateral will be returned to the ING Borrower. The Client Plan will receive credit for all interest, dividends, or other distributions on any borrowed securities. In addition, under some arrangements, the earnings on the collateral due to the ING Borrower, and the dividends, interest, and other distributions on the borrowed securities payable to the Client Plan may be offset against each other, so that only a net amount will be returned to the ING Borrower.

25. Either party may terminate the Exclusive Borrowing Arrangement and/or any outstanding securities loan at any time. Upon termination of any securities loan, the ING Borrower will deliver any borrowed securities back to the Client Plan within five (5) business days of written notice of termination.

26. With regard to those Client Plans for which IITC provides custodial, clearing, and/or reporting functions relative to securities lending transactions, IITC and an independent Client Plan Fiduciary and the ING Borrowers will agree in advance and in writing to any fee that IITC is to receive for such services. Such fees, if any, would be fixed fees (*e.g.,* IITC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee IITC has negotiated to receive from any such Client Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for IITC to provide such functions relative to loans of securities to the ING Borrower will be terminable by the Client Plan within five (5) business days of receipt of written notice without penalty to the Client Plan, except for the return to the ING Borrower of a part of any flat fee paid by such ING Borrower to the Client Plan, if the Client Plan has also terminated its Exclusive Borrowing Arrangement with the ING Borrower. Before entering into an agreement with the Client Plan to provide such functions relative to loans of securities to the ING Borrower, IITC will furnish to the Client Plan any publicly available information which it believes is necessary for the Client Plan to determine whether to enter into or renew the Exclusive Borrowing Arrangement.

27. The conditions of this exemption, if granted, will provide adequate safeguards for the Client Plans which engage in securities lending transactions. Under the terms of this proposed exemption, only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the ING

Borrowers, as measured in accordance with Section I(o) of this proposed exemption. This restriction is intended to assure that any lending to the ING Borrowers will be monitored by an independent Client Plan Fiduciary of above average experience and sophistication in matters of this kind who is acting on behalf of a Client Plan.

Further, safeguards are provided in that for any transactions with ING Borrowers covered by this proposed exemption, ING Institutional, a U.S. affiliate of ING, has agreed to indemnify and hold harmless the Client Plans in the United States (including the sponsor and fiduciaries of such Client Plans) so that the Client Plans will not have to litigate in the case of ING Borrowers in foreign jurisdictions or sue ING Borrowers to realize on the indemnification. Such indemnification by ING Institutional protects the Client Plans against any and all reasonably foreseeable damages, losses, liabilities, costs, and expenses (including attorney's fees) which such plans may incur or suffer, arising from any impermissible use by ING Borrowers of the loaned securities or from an event of default arising from an ING Borrower's failure to deliver loaned securities in accordance with the applicable Basic Loan Agreement or otherwise failing to comply with the terms of such agreement. If any event of default occurs, ING Institutional promptly and at its own expense (subject to rights of subrogation in the collateral and against such borrower), will purchase or cause to be purchased, for the account of the Client Plans, securities identical to the borrowed securities (or their equivalent). Alternatively, if such replacement securities cannot be obtained on the open market, ING Institutional will pay the Client Plan the difference in U.S. dollars between the market value of the loaned securities and the market value of the related collateral, on the date of the borrower's breach of its obligation to return the loaned securities. If, however, the event of default is caused by the ING Borrower's failure to return securities within a designated time, the Client Plan has the right to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase. If the collateral is insufficient to accomplish such purchase, ING Institutional will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on loans or failure to properly indemnify under this provision).

28. The proposed exemption will be protective of the rights of participants and beneficiaries of the Client Plans because of the on-going oversight of certain regulatory agencies. In this regard, ING Bank London is subject to primary supervision of DNB (i.e., De Nederlandsche Bank), the Dutch central bank. DNB is also a member of the European System of Central Banks. Pursuant to the Dutch banking law and directives issued by the European Union (EU), DNB is responsible for safeguarding the solvency and liquidity of Dutch banks and protecting the rights of creditors thereof, including branches of ING Bank located in EU Member States. ING represents that the DNB ensures that there are procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and financial resources. ING further represents that it is required to provide the DNB on a recurring basis with information regarding capital adequacy, as well as periodic, consolidated financial reports on the financial condition of ING Bank N.V. and its affiliates.

DNB has adopted rules to insure that Dutch banks, such as ING Bank, remain solvent through limitations imposed on the risk-bearing operations of such institutions. DNB has also issued liquidity directives mandating that Dutch banks maintain a certain level of liquid assets to insure that all liabilities can be met when due. Finally, DNB supervises the administrative organizations of Dutch banks, including their internal accounting systems and internal control systems. This authority includes taking measures designed to prevent conflicts of interest within Dutch banks and advising (and, when necessary, directing) Dutch banks with regard to their internal administrative organization to insure adequate risk management. It is represented that such supervisory authority also applies to the ING Bank London.

To ensure compliance with all applicable rules and to enable DNB to monitor the operations, Dutch banks are required to submit monthly and audited annual returns which reflect the banks true and fair financial position. DNB can withdraw a bank's license for failure to follow instructions to correct an incorrect return. Failure to file an annual report, within six (6) months of the end of the fiscal year, can result in the imposition of a fine or two years imprisonment.

With regard to enforcement, where a Dutch bank fails to comply with DNB's solvency, liquidity, or administrative organization requirements, DNB will inform the bank that a violation has occurred and that such violation must be corrected. In this regard, it is represented that DNB may instruct the bank on how to correct the violation. Failure to comply with DNB instructions within a two week period, or failure to submit a suitable explanation of the violation, may result in: (a) all management decisions being subject to DNB approval; (b) the appointment of DNB officers to assume control; or (c) when warranted, a cease and desist order or significant fines. If officers of a foreign branch of a Dutch bank, such as ING Bank London, fail to follow DNB instructions, and if such failure rises to a criminal violation, a fine or two years imprisonment may be imposed.

Further protection is offered the Client Plans in that ING Bank London is also subject to regulation by the FSA (i.e., the Securities and Futures Authority of the U.K.) for the Bank of England. FSA assumed the regulatory role of the Bank of England in 1998. FSA's powers include licensing banks in the United Kingdom, issuing directives to address violations or irregularities involving such banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses.

29. As a broker-dealer authorized to conduct business in the United Kingdom, ING London is authorized and governed by the rules, regulations, and registration requirements of the SFA. In this regard, ING London is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and requirements for books and records with respect to client accounts. Although ING London is not registered with the SEC in the United States, the rules and regulations set forth by the SFA share a common objective with the SEC in that both protect the investor by regulating the securities industry under their jurisdiction. The SFA requires each firm that employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations when due. In addition, the SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose

reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record keeping requirements to the effect that required records must be produced at the request of the SFA, at any time. Finally, the rules and regulations of the SFA for broker-dealers impose potential fines and penalties that establish a comprehensive disciplinary system.

30. As a Japanese company authorized as a broker-dealer, ING Japan is governed by the rules, regulations and membership requirements of the MOF (*i.e.,* the Ministry of Finance) and the Tokyo Stock Exchange. In this regard, ING Japan is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and requirements for books and records with respect to client accounts. The MOF and the Tokyo Stock Exchange share a common objective with the SEC in that each provides protection for the investor by the regulation of the securities industry. The rules of MOF and the Tokyo Stock Exchange require each firm that employs registered representatives or registered traders to have a positive tangible net worth and to be able to meet its obligations when due. In addition, the rules of the MOF and the Tokyo Stock Exchange set forth comprehensive financial resource and reporting/disclosure requirements regarding capital adequacy. Further, to demonstrate capital adequacy, the rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and record keeping requirements to the effect that required records must be produced at the request of the MOF and the Tokyo Stock Exchange at any time. Finally, the rules and regulations of the MOF and the Tokyo Stock Exchange for broker-dealers impose potential fines and penalties that establish a comprehensive disciplinary system.

31. In addition to the protections afforded by the DNB and the FSA in the case of the ING Bank London, by the SFA in the case of ING London, and the MOF and the Tokyo Stock Exchange regulations in the case of ING Japan, ING represents that the Foreign Borrowers, including ING Bank London,[13] ING London, and ING Japan, will comply with all applicable provisions of Rule 15a–6 of the 1934 Act. In this regard, Rule 15a–6 provides foreign broker-dealers with a limited exemption from SEC registration requirements, as described below, and offers additional protections. Specifically, Rule 15a–6 provides an exemption from U.S. broker-dealer registration for foreign broker-dealers that induce or attempt to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' [14] or a ''U.S. major institutional investor,'' [15] provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary.

32. Several safeguards, described more fully below, are incorporated into the proposed exemption to ensure the protection of the Client Plans' assets involved in these securities lending transactions. In this regard, ING represents that under Rule 15a–6, any Foreign Borrower that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Provide written consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the rule;

(c) Rely on the U.S. registered broker-dealer [16] through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rule 17a–3 (Records to be Made by Certain Exchange Members) and Rule 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (*e.g.,* telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

33. In all cases, ING will maintain records of each transaction and market records sufficient to assure that all loans

[13] Section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person . . . whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the 1934 Act. Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the applicants will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6 with respect to all Foreign Borrowers.

[14] The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act, if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended.

[15] The term ''U.S. major institutional investor'' is defined in Rule 15a–6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of $100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

The Department notes that a SEC No-Action Letter has expanded the categories of entities that qualify as '''major U.S. institutional investors''. See SEC No-Action letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997.

[16] ING London and ING Japan, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including ING Institutional, to perform this role.

to the ING Borrowers will be effected under arm's-length terms. Such records will be provided to the Client Plan Fiduciary, who is independent of IITC and the ING Borrowers, in the manner and format agreed to by such Client Plan Fiduciary and IITC, without charge to the Client Plan.

34. The applicants represent that the proposed transactions are in the interest of the Client Plans in that the lending of securities is a low-risk method to enable a plan to enhance its returns on otherwise idle assets. In this regard, a Client Plan which participates in securities lending is able to earn a fee for lending the securities to the borrower while continuing to receive the economic benefits of receiving dividends, interest payments, and other distributions made with respect to the loaned securities.

35. The proposed exemption is administratively feasible in that it will not require any ongoing involvement by the Department, and the proposed conditions provide for the review and approval of the securities borrowing agreement by an independent Client Plan Fiduciary. Further, it is represented that the conditions to which the applicants have consented are comparable in all material respects to other recent individual administrative exemptions granted by the Department under similar circumstances. In addition, the applicants represent that both the Plan A and Plan B arrangements described herein incorporate the relevant conditions contained in class exemptions, PTCE 81–6 and PTCE 82–63. Finally, the applicants will bear the cost of filing the application for exemption and the costs associated with providing notice to interested persons, and will be responsible for the payment of all transfer fees and taxes related to securities lending transactions that are the subject of this proposed exemption.

36. In summary, the applicants represent that the subject transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. Plan A requires approval of the terms of the Basic Loan Agreement and the execution of the Agency Agreement (or the Primary Lending Agreement) by an independent Client Plan Fiduciary before such Client Plan lends any securities to an ING Borrower;

b. Under Plan B, an ING Borrower will directly negotiate the Exclusive Borrowing Arrangement with the Client Plan and such arrangement may be terminated by either party to the arrangement at any time;

c. The lending arrangements will permit the Client Plans to lend securities to the ING Borrowers, which have a substantial market position as securities lenders, and will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities while continuing to receive any dividends, interest payments, and other distributions on those securities;

d. Neither the ING Borrowers nor IITC will exercise any discretionary authority or control with respect to the investment of the assets of Client Plans involved in the securities lending transactions, or render investment advice with respect to those assets, including any decisions concerning a Client Plan's acquisition or disposition of securities available for lending;

e. Before a Client Plan participates in a securities lending program under Plan A and before entering into any securities lending transaction under Plan A with an ING Borrower, an independent Client Plan Fiduciary must have: (i) Authorized and approved the Agency Agreement with IITC, where IITC is acting as the direct securities lending agent; (ii) Authorized and approved the Primary Lending Agreement with the primary lending agent, where IITC is serving under a Sub-Agency Agreement with the primary lending agent; (iii) Approved the general terms of the Basic Loan Agreement between such Client Plan and the ING Borrower;

f. A Client Plan may terminate any securities lending agency agreement at any time without penalty on five (5) business days' notice;

g. By the close of business on or before the day the loaned securities are delivered to the ING Borrowers, IITC (or another custodian acting on behalf of the Client Plan) will receive from the ING Borrowers, by various means, collateral consisting of U.S. dollars, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable U.S. bank letters of credit (issued by an entity other than the ING Borrowers) or other collateral permitted under PTCE 81–6;

h. The market value of the collateral which secures any loan of securities will at all times equal at least 102 percent (102%) of the market value of the loaned securities;

i. The Basic Loan Agreement will give the Client Plans a continuing security interest in, and a lien on, the collateral which secures any loan of securities;

j. IITC will monitor daily the level of the collateral which secures any loan of securities;

k. All the procedures regarding the securities lending activities will conform to the applicable provisions of PTCE 81–6 and PTCE 82–63 and will be in compliance with the applicable banking laws of the United Kingdom and the Netherlands, and the securities laws of the United States, the United Kingdom or Japan;

l. In the event the ING Borrower fails to return securities within a designated time, the Client Plan will have the right under the Basic Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price;

m. If the collateral is insufficient to satisfy the obligation of the ING Borrower to return the Client Plan's securities, ING Institutional will indemnify the Client Plan with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Client Plan plus applicable interest at a reasonable rate;

n. The Client Plan will receive the equivalent of all distributions made to the holders of the borrowed securities during the term of the loan;

o. Only those Client Plans which have assets with an aggregate market value of at least $50 million (except for certain Related Client Plans or Unrelated Client Plans whose assets are commingled in a group trust under the conditions discussed herein) will be permitted to lend securities to ING Borrowers;

p. With respect to any calendar quarter, at least 50 percent (50%) or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers, unless the Client Plan has entered into an Exclusive Borrowing Arrangement;

q. The terms of each loan of securities by the Client Plans to the ING Borrowers will be at least as favorable to such plans as those of a comparable arm's-length transaction between unrelated parties;

r. Each Client Plan will receive monthly reports on the securities lending transactions, so that an independent Client Plan Fiduciary may monitor the securities lending transactions with the ING Borrower;

s. Before entering into the Basic Loan Agreement and before a Client Plan lends any securities to an ING Borrower, an independent Client Plan Fiduciary will receive sufficient information concerning the financial condition of the ING Borrower, including the audited

and unaudited financial statements of such ING Borrower;

t. The ING Borrower will provide to a Client Plan prompt notice at the time of each loan by such plan of any material adverse changes in such ING Borrower's financial condition, since the date of the most recently furnished financial statements;

u. The Client Plan will receive a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or will have the opportunity to derive compensation through the investment of cash collateral;

v. The loan rebate or similar fee paid by the Client Plan to the ING Borrower will not be greater than the fee such Client Plan would pay an unrelated party in an arm's length transaction;

w. Prior to the Client Plan's approval of the lending of its securities to any ING Borrowers, a copy of the final exemption, if granted, and a copy of this notice of pendency will be provided to the Client Plan;

x. ING will maintain or cause to be maintained within the United States for a period of six (6) years from the date of each transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable certain parties to determine whether the conditions of this exemption, if granted, have been met; and

y. All loans involving the Foreign Borrowers must satisfy certain supplemental requirements, as set forth in Section I(q), above, of this proposed exemption.

*Notice to Interested Persons*

Included among those persons who may be interested in the pendency of the proposed exemption are the trustees or fiduciaries of Client Plans which are interested in lending securities to the ING Borrowers. In this regard, the applicant represents that because the Client Plans which will be potentially interested in the transactions cannot be identified at the time the Notice of Proposed Exemption (the Notice) is published in the **Federal Register**, that the only practical means of notifying the trustees or fiduciaries of the Client Plans is by publication of the Notice in the **Federal Register**. Written comments and/or requests for a hearing must be received by the Department not later than thirty (30) days from the date of the publication of this proposed exemption in the **Federal Register**. Further, it is represented that prior to entering into a securities lending agreement with a Client Plan, the applicants will provide the appropriate fiduciaries of such plan, by first class mail, a copy of such Notice and a copy of the final exemption, if granted.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department telephone (202) 219–8883. (This is not a toll-free number.)

**Cranston Print Works Company General Employees' Retirement Plan (the Plan)**

**Located in Cranston, Rhode Island**

[Application No. D–10909]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed purchase by the Plan of shares of common stock (the Stock) of Cranston Print Works Company (Cranston) from Cranston, the Plan's sponsor; (2) the Plan's holding of the Stock; (3) the acquisition and holding by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Cranston at a price which is the greater of: (i) the fair market value of the Stock determined by an independent appraisal at the time of the exercise of the Put Option, or (ii) the price at which the Stock originally was sold by Cranston to the Plan; and (4) the possible future repurchase of the Stock by Cranston pursuant to the Put Option or a right of refusal, provided the following conditions are satisfied: (a) the purchase of the Stock by the Plan will be a one-time transaction for cash, and no commissions will be paid by the Plan with respect to the purchase; (b) the Stock will represent no more than 7.5% of the value of the assets of the Plan; (c) the Plan pays no more than the fair market value of the Stock on the date of the acquisition, as determined by an independent, qualified appraiser; (d) the transactions will be expressly approved on behalf of the Plan by a qualified, independent fiduciary based upon a determination that such acquisition is in the best interests of, and appropriate for, the Plan; (e) the Plan's independent fiduciary will monitor the holding of the Stock by the Plan and take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate; (f) the purchase price per share for any shares of the Stock that are repurchased by Cranston pursuant to the right of first refusal will be the greater of: (i) the then current fair market value of the Stock, as determined by a bona fide third party purchase offer from an unrelated party, or (ii) the fair market value of the Stock, as determined by a contemporaneous independent appraisal; and (g) Cranston's obligation under the Put Option is secured by an escrow arrangement, as described herein, which is maintained by the Plan's independent fiduciary as long as the Plan continues to hold any shares of the Stock.

*Summary of Facts and Representations*

1. Cranston, the Plan sponsor, is involved in the textile, trucking and chemical industries. Equity interests in Cranston, including the Stock, are not publicly-traded. As of December 31, 1999, approximately 97.4% of the outstanding shares of the Stock were held by Cranston's Employee Stock Ownership Plan (the ESOP). The balance of the outstanding Stock is held by individual shareholders.

2. The Plan is a defined benefit pension plan. As of December 31, 1999, the Plan had assets with a total market value of approximately $112,000,000. The Plan had 1,346 participants as of that date and an accumulated benefit obligation of approximately $56,400,000. The total market value of the Plan's assets has increased since December 31, 1999; as of June 6, 2000, the total was over $115 million. As of the January 1, 2000 actuarial valuation, the Plan had projected benefit obligations of $56.4 million, making the Plan better than 200% funded with respect to the projected benefit obligations.

3. The Plan proposes to acquire approximately 650,000 shares of the Stock from Cranston's treasury.[17] The applicant represents that the Plan's investment in the Stock will be limited to no more than 7.5% of the Plan's assets, determined immediately after the sale. No assets of the Plan are currently invested in any loans to, property leased to, or securities issued by Cranston or any of its affiliates. No commissions will be charged with respect to the sale of the Stock to the Plan.

4. In connection with the Plan's acquisition of the Stock, the Plan will

[17] As of May 21, 2000, the price per share for the Stock was $13.29. Therefore, the proposed transaction will involve approximately $8.6 million in cash.

also obtain a Put Option from Cranston. The Put Option, which will be exercisable by the Plan's independent fiduciary (see reps. 6 and 9, below), will permit the Plan to require Cranston to purchase from the Plan all or any portion of the Stock sold to the Plan upon a determination by the Plan's independent fiduciary that the Stock is no longer a prudent investment for the Plan considering: (a) the diversification and liquidity of the Plan's assets; (b) the relative size of the investment in the Stock as a proportion of the Plan's overall assets; (c) the funding of the Plan (i.e., the ratio of the Plan's assets to its actuarially determined obligations); and (d) Cranston's prospects as a long-term investment. The purchase price to Cranston of such Stock sold pursuant to the Put Option will be the greater of: (i) the fair market value of the Stock at the time the Put Option is exercised, as determined by an independent appraisal, or (ii) the price at which the Stock was sold by Cranston to the Plan.

The Plan will also give Cranston a right of first refusal with respect to the Stock. Thus, if the Plan proposes to sell any or all of its shares of the Stock to a party other than Cranston, Cranston will have a right of first refusal to repurchase those shares from the Plan for cash. The purchase price per share for any shares of Stock that are repurchased pursuant to the right of first refusal will be the greater of the then fair market value for the Stock, as determined by a bona fide third party purchase offer from an unrelated party, or the fair market value of the Stock as determined by a contemporaneous independent appraisal.

5. The applicant represents that the acquisition of the Stock by the Plan will be a one-time transaction for cash, and the Plan will invest no more than 7.5% of its assets in the Stock. The applicant further represents that the Stock purchased by the Plan will not be a ''qualifying employer security'' as defined under section 407(d)(5) of the Act, because it will not be an employer security that satisfies the requirements of section 407(f)(1) of the Act. In this regard, the Stock purchased by the Plan will not satisfy section 407(f)(1)(B) of the Act because that section requires that at least 50% of the aggregate amount of the Stock which is issued and outstanding be held by persons independent of the issuer. Thus, since the ESOP holds approximately 97.4% of the Stock, the requirements of section 407(f)(1)(B) will not be met. Accordingly, the applicant states that the statutory exemption contained in section 408(e) of the Act (relating to the acquisition or sale by a plan of qualifying employer securities) will not apply to the proposed acquisition or sale of the Stock by the Plan, and the applicant has requested the relief proposed herein.

6. In connection with the Plan's proposed acquisition of the Stock, Cranston will deposit 12.5% of the sales proceeds as the initial balance in an escrow account (the Escrow) as an additional safeguard to support Cranston's obligations to the Plan under the Put Option. Thus, the Escrow will ensure that the proposed transaction is in the Plan's best interests and protective of the Plan. Cranston further represents that it will add deposits of $125,000 to the Escrow at the end of each calendar quarter thereafter until a total of 25% of the purchase price of the Stock has been deposited into the Escrow. The applicants represent that the Escrow will be held by the Plan's independent fiduciary (see rep. 7, below).

7. State Street Bank and Trust Company (the Bank) headquartered in Boston, Massachusetts, will act as the Plan's independent fiduciary for the purposes of approving the proposed transaction and monitoring the retention of the Stock by the Plan after the acquisition. Cranston has no corporate lending or banking relationships with the Bank and owns no interest in the Bank either directly or indirectly. The Bank is an industry leader in independent fiduciary transactions. Among other things, the Bank manages over $75 billion in company stock as assets in retirement and deferred compensation plans. The Bank has acted as an independent fiduciary in a wide range of transactions, including leveraged employee stock ownership plan acquisitions, defined benefit plan investments, mergers and acquisitions, and initial public offerings.

8. In addition, the Bank has retained Willamette Management Associates (Willamette), located in Chicago, Illinois, to act as its financial advisor in connection with its decision to purchase the Stock. Willamette, which has been in operation for over 31 years, has a national practice in providing opinions regarding fairness and securities valuation. Willamette has made a preliminary determination that, as of May 21, 2000, the Stock had a fair market value of $13.29 per share. Willamette developed this value for the Stock utilizing the Capitalization of Earnings Method and the Guideline Publicly Traded Method. Willamette will prepare an appraisal as of the date of sale. In determining fair market value on the acquisition date, Willamette will consider the income and cash flow capacities of Cranston. Willamette will review prior analyses of the Stock which have been conducted for the ESOP, and discuss with Cranston's management all relevant changes to Cranston's financial situation since the most recent prior analysis. Willamette will review financial data bearing upon recent and proposed operations, and will consider the most current economic environment in which Cranston operates its business. Neither Willamette nor any of its principals own any interest in Cranston, and Cranston owns no interest in Willamette.

9. The Bank represents that it will independently review Willamette's valuation of the Stock, as well as the annual valuations performed by Management Planning, Inc. for the ESOP for the years 1997, 1998 and 1999. In addition, the Bank will independently review Cranston's audited financial statements for the fiscal years ending June 30, 1997, 1998 and 1999, and unaudited financial statements for the nine month period ending March 31, 2000. The Bank will also review the current audited and unaudited financial statements that are available as of the date of the sale of the Stock to the Plan. The Bank will interview officers at Cranston and will consider the purchase of the Stock in the context of the investment goals of the Plan.

Prior to purchasing the Stock, the Bank, as a result of this review and relying on the opinion of Willamette, will make specific findings that: (a) it is appropriate for the Plan to purchase the Stock from Cranston; (b) such purchase is in the Plan's best interests; and (c) the Plan is paying no more than adequate consideration (i.e., fair market value) for the Stock. The Bank represents that it has made a preliminary determination, based upon the advice of Willamette, that the transaction is prudent for the Plan and in the Plan's best interests, and that the proposed consideration to be paid for the Stock by the Plan would not be greater than its current fair market value.

10. The Bank will have the authority and the responsibility, as the Plan's independent fiduciary, to monitor the Plan's continued holding of the Stock. The Bank will make all decisions for the Plan regarding the continued holding or disposition of the Stock.[18] The Bank

[18] The Department notes that any decision made by the Bank as the Plan's independent fiduciary with respect to the exercise of the Plan's rights under the Put Option shall be fully subject to the fiduciary responsibility provisions of the Act. However, by proposing this exemption, the Department is not expressing an opinion regarding

Continued

will direct the Plan's trustee with respect to the exercise of voting and other privileges applicable to shareholders of Cranston, and the Plan's rights pursuant to the Put Option as it deems appropriate.

11. In summary, the applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) the Stock will represent no more than 7.5% of the Plan's assets at the time of the acquisition; (b) the purchase price for the Stock will be determined by an evaluation prepared by Willamette, a qualified independent expert in the valuation of such securities; (c) the Plan has received an additional safeguard in the form of an irrevocable Put Option which will enable the Plan, upon the independent fiduciary's decision, to sell the Stock back to Cranston at a price which is equal to the greater of the Stock's then current fair market value, as determined by independent appraisal, or the price at which the Stock was sold by Cranston to the Plan; (d) the Bank, an independent fiduciary for the Plan, will determine that the transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Bank will monitor the holding of the Stock and determine, among other things, when to exercise the Put Option; (f) any sale of the Stock by the Plan to Cranston pursuant to Cranston's right of first refusal will be triggered by a proposed sale of the Stock by the Plan to an unrelated party pursuant to a bona fide purchase offer, and any shares of the Stock that are repurchased by Cranston, under its right of first refusal, will be for cash at a price which is equal to the greater of the then current fair market value of the Stock, as determined by the bona fide third party purchase offer, or the fair market value of the Stock as determined by a contemporaneous independent appraisal; and (g) Cranston will make an initial deposit of 12.5% of the purchase price for the Stock into the Escrow (which will be held by the Bank), and will make additional deposits of $125,000 at the close of each calendar quarter thereafter until a total of 25% of the purchase price for the Stock has been deposited into the Escrow to support Cranston's obligations to the Plan under the Put Option.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of December, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

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**BILLING CODE 4510–29–P**

whether any actions taken by the Bank would be consistent with its fiduciary obligations under Part 4 of Title I of the Act. In this regard, section 404(a) requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Prohibited Transaction Exemption 2000–63; [Exemption Application No. D–10651, et al.] Grant of Individual Exemptions; Merrill Lynch & Co., Inc. (ML&Co.)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Merrill Lynch & Co., Inc. (ML&Co.) Located in New York, NY**

[Prohibited Transaction Exemption 2000–63 Exemption Application No. D–10651]

**Exemption**

*Section I. Covered Transactions*

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the purchase or sale by employee benefit plans (the Plans), other than Plans sponsored by ML&Co. or its affiliates (collectively, the Applicants), of Market Index Target-Term Securities (the MITTS), which are debt securities issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the MITTS.

This exemption is subject to the general conditions that are set forth below in Section II.

*Section II. General Conditions*

(a) The MITTS are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the MITTS is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to ML&Co. or its affiliates in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[1]

(e) ML&Co. agrees to notify Plan investors in the prospectus (the Prospectus) for the MITTS that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the MITTS.

(f) The MITTS do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the MITTS, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such MITTS, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the MITTS will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the MITTS is based;

(3) A numerical example, capable of being understood by the average investor, which explains the calculation of the return on the MITTS at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the MITTS are issued;

(5) The date on which the MITTS will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the MITTS is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the MITTS may be redeemed;

(12) The exchange or market where the MITTS are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the MITTS are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event a MITTS security is delisted from either the American Stock Exchange (the AMEX), the New York Stock Exchange or any other nationally-recognized securities exchange, Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) will apply for trading through the National Association of Securities Dealers Automated Quotations System, which requires that there be independent market-makers establishing a market for such securities in addition to MLPF&S. If there are no independent market-makers, the exemption will no longer be considered effective with respect to that MITTS security.

(j) The MITTS are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the MITTS is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a ''market disruption event'' that is described in the Prospectus for the MITTS.

(l) The MITTS are based on an Index that is—

(1) Created and maintained[2] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants or an affiliate, but maintained by an entity that is unrelated to the Applicants, and

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of at least 10 publicly-traded securities that are not issued by the Applicants or their affiliates, are designated in advance and listed in the Prospectus for the MITTS (under either circumstance, neither the Applicants nor their affiliates may unilaterally modify the composition of the Index, including the methodology comprising the rate of return),

(ii) Meets the requirements for an Index in Rule 19b–4 under the Securities Exchange Act of 1934, and

[1] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[2] For purposes of this exemption, the term ''maintain'' means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants or their affiliates.

(iii) The index value for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC or Bloomberg L.P., or through a national securities exchange, such as the AMEX.

(m) The Applicants do not trade in any way intended to affect the value of the MITTS through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published on October 19, 2000 at 65 FR 62756.

**Written Comments**

The Department received one written comment with respect to the notice of proposed exemption. The comment, which was submitted on behalf of the Applicants, requests several clarifications to the conditional language of the proposal. First, in Section II(i) of the General Conditions, in the first sentence thereof, the Applicants suggest that the phrase ''In the event a MITTS security is delisted * * *'' be substituted for the phrase ''In the event the MITTS are delisted * * *'' Second, in the last sentence of the same subparagraph, at the end thereof, the Applicants request the addition of the following new phrase ''with respect to that MITTS security.'' Third, in Section II(l) of the General Conditions, the Applicants suggest that the word ''and'' be added at the end of subparagraph (l)(2), that the comma prior to the parenthetical in subparagraph (l)(2)(i) be deleted, that a lower case ''u'' be substituted for the upper case ''U'' in the word ''under'' in the parenthetical and that the period at the end of (but within) the parenthetical be deleted.

The Department concurs with these clarifications to the proposed exemption and has made the changes requested by the Applicants in the operative language of the final exemption. The Department has also noted these changes in the Summary of Facts and Representations of the proposed exemption.

For further information regarding the Applicants' comment letter and other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10651) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the Applicants' comment, the Department has decided to grant the exemption subject to the modifications described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**The David Mandelbaum IRA Rollover Account (the IRA) Located in West Orange, New Jersey**

[Prohibited Transaction Exemption 2000–64; Exemption Application No. D–10765]

**Exemption**

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the cash sale by the IRA * ensp;* ensp;* to the David Mandelbaum Family Trust of a 50 percent (50%) undivided interest in two (2) parcels of improved real property subject to a long term lease (the Property); provided the following conditions are satisfied:

(1) The sale is a one time transaction for cash;

(2) The terms and conditions of the sale are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties;

(3) The IRA receives the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale;

(4) The fair market value of the IRA's undivided interest in the Property is determined by an independent, qualified appraiser, as of the date of the sale; and

(5) The IRA does not pay any commissions, costs, finder's fees, or other expenses in connection with such sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on October 11, 2000, at 65 FR 60464.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**I.B.E.W. LU 567 Electrical Joint Apprenticeship and Training Trust Fund (the Training Plan) and Money Purchase Retirement Plan of Local 567, I.B.E.W (the M/P Plan) (Collectively, the Plans) Located in Falmouth, Maine**

[Prohibited Transaction Exemption 2000–64; Exemption Application Nos. L–10906 and D–10907]

**Exemption**

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

* * * Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.

of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 31, 2000, to the leases (the Leases) of certain office space and supplemental facilities (the Leased Space) to the Plans by Local 567 I.B.E.W. Building Corporation (the Building Corporation), an entity which is wholly owned by Local 567 of the International Brotherhood of Electrical Workers (the Union), a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(1) The terms of the Leases are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party;

(2) A qualified, independent appraiser determines annually the fair market rental value of the Leased Space;

(3) The Lease payments are adjusted annually by an independent fiduciary to assure that such Lease payments are not greater than the fair market rental of the Leased Space. The Lease payments are reduced, if the fair market rental value, as determined by the independent fiduciary, decreases;

(4) An independent fiduciary determines that the transactions are appropriate for the Plans and in the best interest of the Plans' participants and beneficiaries;

(5) The independent fiduciary monitors the terms of the transactions and conditions of this exemption at all times, and takes whatever actions are necessary and proper to enforce the Plans' rights under the Leases and protect the participants and beneficiaries of the Plans. (Such independent fiduciary duties also include, but are not limited to, negotiating any required amendments to the Leases on behalf of the Plans to make certain the terms of the Leases are commercially reasonable.); and

(6) The annual fair market rental amount for the Leased Space will not exceed 5% of the Training Plan's total assets, and 1% of the M/P Plan's total assets.

**EFFECTIVE DATE:** This exemption is effective as of August 31, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 22, 2000 at 65 FR 57397.

**Written Comments**

The Department received two written comments (the Comments) with respect to the Notice and no requests for a hearing. The Comments were submitted by the same commenter (the Commenter), who is a party in interest with respect to the Plans. Set forth below is a discussion of the major points made by the Commenter, and the applicant's response to the issues raised thereby.

*Discussion of the Comments*

The Commenter raised certain issues relating to the operation of the Union and the Plans. In particular, the Commenter made various allegations regarding Milton McBreairty (Mr. McBreairty), who is the business manager for the Union and a trustee of the Plans (Trustee). The Commenter believed that Mr. McBreairty is not carrying out his duties as business manager for the Union in an appropriate manner and that his duties as business manager will conflict with his duties as a Plan Trustee. Among other things, the Commenter suggested that there should be a complete audit and examination of the business manager's spending of the Union's monies. The Commenter also questioned whether Maineland Appraisal Consultants of Portland, Maine, the Plans' independent fiduciary for the Leases (the Independent Fiduciary), and Frank R. Montello, the president of the Independent Fiduciary, will be able to effectively represent the interests of the Plans or can be considered independent of the business manager. In this regard, the Commenter asserted that the Independent Fiduciary's fees are being paid by the business manager from the Union's funds. In addition, the Commenter stated that the M/P Plan should only be permitted to lease a maximum of 800 square feet in Building I, instead of the 1200 square feet mentioned in the Notice. Finally, the Commenter stated that the annual fair market rental amount for the Leased Space paid by the M/P Plan should not represent more than 1% of the M/P Plan's total assets, rather than the 5% required by condition 6 of the Notice.

*Discussion of the Applicant's Response to the Comments*

1. With respect to the Commenter's assertion that Mr. McBreairty's position as business manager of the Union is inconsistent with his duties as a Plan Trustee, the applicant stated that the IBEW Constitution requires that the Union's business manager serve as a Union Trustee for the Plans. Further, the applicant noted that the safeguards set forth in the Notice are intended to protect the Plans' participants from conflicts of interest relating to all three Union Trustees for the Plans (not only Mr. McBreairty). The governing documents of the Plans require at least one Union Trustee's affirmative vote for any action. The applicant represents that because all of the Union Trustees may be construed as having a conflict of interest in approving any Plan leases with the Building Corporation, the Plans have engaged the Independent Fiduciary to protect the interests of the Plans and their participants and beneficiaries.

2. The applicant also addressed the Commenter's concern that Mr. Montello, who is the president of the Independent Fiduciary, is biased because the business manager for the Union pays him with the Union members' money. The applicant stated that Mr. Montello is not compensated by the business manager with Union funds. Rather, all of the Independent Fiduciary's fees, just like other administrative expenses of the Plans, are paid by the Plans' Trustees out of the Plans' assets and are accounted for in the Plans' administrative budgets.

The applicant represented that Mr. McBreairty is paid by the Union for his services to the Union as business manager.

Mr. McBreairty does not receive any compensation from the Plans apart from reimbursement of his expenses as the Plans' Trustee while doing business for the Plans, as reported to the Department on the Plans' annual Form 5500 filings. In addition, the applicant noted that each year the Plans engage certified public accountants to audit their finances, and such audits have not revealed any misuse of the Plans' funds. The applicant represented further that the M/P Plan and the Union have been subject to random audits by the Internal Revenue Service and the Department, and none of these audits have revealed any improper payments to Mr. McBreairty or any other Plan Trustee.

3. With respect to the Commenter's concerns about the amount of space leased to the M/P Plan, the applicant stated that the office space needs of the M/P Plan are dictated by its need to house all of its staff, equipment and records. In this regard, the applicant maintained that the anticipated expansion of its portion of the Leased Space up to 1200 square feet is reasonable and appropriate for its operations which involve overseeing 500 current Plan participant accounts.

The applicant also addressed the Commenter's request that the annual fair market rental for the Leased Space rented to the M/P Plan be required to represent less than 1% of the M/P Plan's assets. The applicant stated that the 5% limitation with respect to the M/P Plan's assets cited in the Notice is intended to be a maximum amount. Furthermore,

the applicant noted that the M/P Plan's initial annual lease payments for the Leased Space in Building I represent only approximately 1/100th of 1% of the current market value of the M/P Plan's assets.

In consideration of this Comment, the Department has modified condition 6 of the final exemption such that it reads: ''The annual fair market rental amount for the Leased Space will not exceed 5% of the Training Plan's total assets and 1% of the M/P Plan's total assets.''

After giving full consideration to the entire record, including all of the Comments submitted to the Department and the responses made by the applicant, the Department has determined to grant the exemption, subject to the modification described above.

The Comments have been included as part of the public record for the exemption application. Interested persons should be aware that the complete exemption application file is available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

3. The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 1st day of December, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00–31018 Filed 12–5–00; 8:45 am]

**BILLING CODE 4510–29–P**

## MEDICARE PAYMENT ADVISORY COMMISSION

### Commission Meeting

**AGENCY:** Medicare Payment Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, December 14, 2000, and Friday, December 15, 2000, at the Ronald Reagan Buildings, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on December 14, and at 9 a.m. on December 15.

Topics for discussion include: payment update for hospital inpatient services; analysis of Medicare + Choice; issues in post-acute care; the March 2001 Report; updating payments for physician services and ambulatory care facilities; end-stage renal disease payment policies in traditional Medicare; hospital margins and subsidies analysis for rural hospitals; MedPAC site visits to rural communities, and the disproportionate share payment adjustment for inpatient hospitals.

Agendas will be mailed on December 6, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

**ADDRESSES:** MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

**FOR FURTHER INFORMATION CONTACT:** Diane Ellison, Office Manager, (202) 653–7220.

**Murray N. Ross,**

*Executive Director.*

[FR Doc. 00–30959 Filed 12–5–00; 8:45 am]

**BILLING CODE 6820–BW–M**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until January 5, 2001.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

*Clearance Officer:* Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411. It is also available on the following website: *http://www.NCUA.gov.*

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133–0004.

*Form Number:* NCUA 5300.

*Type of Review:* Revision to the currently approved collection.

*Title:* Semi-Annual and Quarterly Call Report.

*Description:* The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

*Respondents:* All Credit Unions.

*Estimated No. of Respondents/Recordkeepers:* 11,000.

*Estimated Burden Hours Per Response:* 9 hours.

*Frequency of Response:* Quarterly and Semi-Annually.

*Estimated Total Annual Burden Hours:* 225,000.

*Estimated Total Annual Cost:* N/A.

By the National Credit Union Administration Board on November 30, 2000.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 00–30993 Filed 12–5–00; 8:45 am]

BILLING CODE 7535–01–U

## NATIONAL INDIAN GAMING COMMISSION

### Fee Rates

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.09% (.0009) for tier 2 for calendar year 2000. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission.

**FOR FURTHER INFORMATION CONTACT:** Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the rate being finalized today are effective for calendar year 2000.

**Montie R. Deer,**

*Chairman, National Indian Gaming Commission.*

[FR Doc. 00–31084 Filed 12–5–00; 8:45 am]

BILLING CODE 7565–01–M

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** National Science Foundation, National Science Board.

**DATE AND TIME:**

December 14, 2000: 11:30 a.m.–11:45 a.m.; Closed Session

December 14, 2000: 12:30 p.m.–1 p.m.; Closed Session

December 14, 2000: 1 p.m.–5 p.m.; Open Session

**PLACE:** The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

**STATUS:** Part of this meeting will be closed to the public; Part of this meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**Thursday, December 14, 2000**

*Closed Session (11:30 a.m.–11:45 a.m.)*

—Closed Session Minutes, October 2000
—Personnel
—NSB nominees
—NSB Public Service Award

*Closed Session (12:30 p.m.–1:00 p.m.)*

—Awards and Agreements
—FY 2002 Budget

*Open Session (1:00 p.m.–5:00 p.m.)*

—Open Session Minutes, October 2000
—Closed Session Items for January 31, February 1, and March 14, 15, 2001
—Chairman's Report
—Director's Report
—Report: NSF Public Affairs Advisory Committee
—COSEPUP Postdoc Study: Bruce Alberts
—NSF & Social Sciences: N. Bradburn
—NSB Report: Allocation of Scientific Resources
—NSB Report: NSF International Activities
—Committee Reports
—Other Business

**Marta Cehelsky,**

*Executive Officer.*

[FR Doc. 00–31143 Filed 12–4–00; 10:27 am]

BILLING CODE 7555–01–M.

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–397]**

### Energy Northwest; WNP–2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Energy Northwest (the licensee), for operation of WNP–2 located in Benton County, Washington.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would change the name of the facility from WNP–2 to Columbia Generating Station in all applicable locations of the Facility Operating License including the licensee's technical specifications (TS). In addition, the proposed action would make editorial changes to TS Figure 4.1–1, ''Site Area Boundary'' modifying or deleting text associated with references to WNP–2. TS Figure 4.1–1 also identifies a building as both the ''Plant Support Facility'' and the ''Emergency Operations Facility.'' The licensee has proposed a change to delete the name ''Plant Support Facility'' from the figure.

The proposed action is in accordance with the licensee's application for amendment dated October 12, 2000.

*The Need for the Proposed Action*

The proposed action is needed to change the operating license to accurately reflect the name change of the facility from WNP–2 to Columbia Generating Station and to identify the building in TS Figure 4.1–1 with only the name ''Emergency Operations Facility.''

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the name change is administrative in nature and will not affect the operation of WNP–2.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regards to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the

proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for WNP–2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on November 1, 2000, the staff consulted with the Washington State official, Mr. Richard Crowley of the Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 12, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November 2000.

For the Nuclear Regulatory Commission.

**Stephen Dembek,**

*Chief, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–31099 Filed 12–5–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of December 4, 11, 18, 25, 2000, January 1, and 8, 2001.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Weeks of December 4**

*Monday, December 4, 2000*

1:55 p.m.
Affirmation Session (Public Meeting)
a: Final Rule Amending the Fitness-for-Duty Rule (Tentative)
2:00 p.m.
Briefing on License Renewal Generic Aging Lessons Learned (GALL) Report, Standard Review Plan (SRP), and Regulatory Guide (Public Meeting) (Contact: Chris Grimes, 301–415–1183)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

**Week of December 11—Tentative**

There are no meetings scheduled for the Week of December 11.

**Week of December 18—Tentative**

*Wednesday, December 20, 2000*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on the Status on the Fuel Cycle Facility Oversight Program Revision (Public Meeting) (Contact: Walt Schwink, 301–415–7253)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

**Week of December 25—Tentative**

There are no meetings scheduled for the Week of December 25.

**Week of January 1, 2001—Tentative**

There are no meetings scheduled for the Week of January 1, 2001.

**Week of January 8, 2001—Tentative**

Tuesday, January 9, 2001
9:30 a.m.
Briefing on EEO Program (Public Meeting)

**Wednesday, January 10, 2001**

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Status on Nuclear Waste Safety (Public Meeting)
This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

The Schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

* * * * *

**ADDITIONAL INFORMATION:** By a vote of 5–0 on November 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of POWER AUTHORITY OF THE STATE OF NEW YORK ENTERGY COMPANIES, Transfer of licenses for Indian Point 3 and FitzPatrick nuclear plants, Petitions to Intervene'' be held on November 27, and on less than one week's notice to the notice.

By a vote of 5–0 on November 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of FLORIDA POWER & LIGHT CO., License Renewal Application for Turkey Point Units 3 and 4; Licensing Board Referral and Scheduling Order'' be held on November 27, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 1, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–31154 Filed 12–4–00; 12:19 pm]

BILLING CODE 7590–01–M

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Performance Review Board; Membership: Senior Executive Service

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Ledia Esther Bernal, Director, Office of Financial and Administrative Services, Occupational Safety and Health Review Commission, 1120 20th Street, NW., 9th Floor, NW., Washington, DC 20036, (202) 606–5390.

**SUPPLEMENTARY INFORMATION:** Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s).

Members of the Performance Review Board are:

1. Elizabeth M. Thornton, Director, Office of Field Programs, Equal Employment Opportunity Commission.
2. Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission.
3. Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission.
4. Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission.

Dated: November 30, 2000.

**Thomasina V. Rogers,**

*Chairman.*

[FR Doc. 00–30992 Filed 12–5–00; 8:45 am]

**BILLING CODE 7600–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24776; File No. 812–12300]**

## John Hancock Variable Series Trust I, et al.; Notice of Application

November 30, 2000.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of an application under Section 17(b) of the Investment Company Act of 1940 (''1940 Act'') for an exemption from Section 17(a) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit one series of John Hancock Variable Series Trust I (the ''Trust'') to acquire all of the assets and liabilities of another series of the Trust. Because of certain affiliations, applicants may not be able to rely on rule 17a–8 under the 1940 Act.

**APPLICANTS:** John Hancock Variable Series Trust I (''Trust'') and John Hancock Life Insurance Company (''John Hancock'').

**FILING DATE:** The application was filed on October 13, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on December 21, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Arnold R. Bergman, Esquire, P.O. Box 111, John Hancock Place, Boston, MA 02117.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the 1940 Act as an open-end diversified management investment company and is currently comprised of 33 series (''Funds'').

2. Two of these Funds are party to the transaction for which Applicants seek exemptive relief: the International Opportunities II Fund (the ''Acquired Fund'') and the International Opportunities Fund (the ''Acquiring Fund'').

3. John Hancock serves as investment adviser to both the Acquired Fund and the Acquiring Fund. John Hancock is a wholly-owned subsidiary of John Hancock Financial Services, Inc., a publicly-owned diversified financial services company whose shares are traded on the New York Stock Exchange.

4. T. Rowe Price International, Inc. (''T. Rowe Price'') serves as sub-adviser to both the Acquired Fund and the Acquiring Fund. T. Rowe Price uses substantially the same personnel and analytical techniques in managing each fund. Applicants assert that the reorganization will not change the Acquiring Fund's Investment strategies or the analytical techniques or personnel that T. Rowe Price uses to implement them. Prior to June 13, 2000, the Acquired Fund had been called the Global Equity Fund reflecting a ''global'' investment strategy and was sub-advised by Scudder Kemper investments, Inc. The current sub-investment management with T. Rowe Price was approved by a vote of the Acquired Fund's shareholders (based on instructions received from participating contract owners).

5. The shares of the Acquired Fund and the Acquiring Fund are currently sold exclusively to John Hancock and certain insurance companies affiliated with John Hancock (collectively, the ''Insurance Companies'') for allocation to separate accounts (the ''Separate Accounts'') established to fund the benefits under variable annuity contracts and variable life insurance policies (collectively, the ''Contracts'') issued by these companies. The Separate Accounts are registered as investment companies of the unit investment trust type under the 1940 Act. As a result of investing ''seed money'' in the Acquired Fund, John Hancock beneficially owner more than 5% of the Acquired Fund's outstanding shares.

6. Owners of the Contracts (''Owners'') may choose to allocate their Contract premiums and account values among various investment options, including the Acquired Fund and/or the Acquiring Fund. As a result, Owners may participate, indirectly, in the performance of one or both of the funds.

7. Applicants assert that except for the fact that the Acquiring Fund is significantly larger than the Acquired Fund, the two funds are identical (including with respect to their investment programs, the identity of their investment and sub-investment adviser, their advisory fee schedules, and the types of other costs and expenses that they bear).

8. On September 27, 2000, the Trust's board, including all of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the 1940 Act (''Independent Trustees''), unanimously approved a reorganization of the Acquired Fund into the Acquiring Fund (the ''Reorganization Agreement'' or ''Plan''). The reorganization is expected to occur on December 22, 2000 (the ''Closing Date''). Under the Plan, the Acquiring Fund will acquire substantially all of the assets, subject to the liabilities, of the Acquired Fund in consideration of the issuance by the Acquiring Fund of shares having an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Fund's shares, determined as of 4:00 p.m. Eastern Time (the ''Effective Time'') on the Closing Date. The NAV of each Fund's shares for these purposes

will be computed in the manner set forth in the Trust's Form N–1A registration statement as currently in effect with the Commission. The aforementioned Acquiring Fund shares will be issued pro-rata to the Acquired Fund's shareholders of record as of the Effective Time.

9. The Trust's Board, including all of the Independent Trustees, determined that participation in the reorganization is in the best interests of the shareholders and Contract Owners participating in each of the Acquired and Acquiring Funds and that the interests of existing shareholders and Owners will not be diluted as a result of the reorganization. In approving the reorganization, the following factors, among others, were relevant to the Board: (a) That, because of breakpoints, combining the Acquired Fund and the Acquiring Fund will result in a lower effective rate of advisory fees and other expenses for the Acquired Fund and, to a lesser extent, for the Acquiring Fund; (b) that the funds' investment programs are essentially identical, which means that there will be no need to liquidate and reinvest any portfolio securities in connection with the reorganization; (c) the fact that John Hancock will bear all other direct or indirect costs and expenses associated with the reorganization; (d) the tax-free nature of the reorganization; and (e) that the reorganization presents no foreseeable disadvantages to either fund or to any Owner.

10. The Plan is subject to a number of conditions precedent, including that the reorganization will have been approved by the vote of shareholders of the Acquired Fund. In connection with that vote, the Insurance Companies have solicited instructions from Owners as to how to vote the Acquired Fund's outstanding shares. This solicitation will be made pursuant to a Form N–14 registration statement that the Trust filed with the Commission on October 10, 2000. Applicants assert that shares of the Acquired Fund for which no instructions are received in time to be voted will be represented by the Insurance Companies at the meeting and voted in the same proportion as shares for which instructions have been received in time to be voted. Applicants further assert that Acquired Fund shares not attributable to policies or contracts represented by Insurance Companies, including shares held by John Hancock reflecting ''seed money,'' will be voted in the same proportion as shares for which instructions have been received in time to be voted.

11. The Plan may be terminated at any time by mutual agreement between the Trust and John Hancock. Applicants have agreed to the relief they are requesting being conditioned on their obtaining prior approval from the Commission of any material change in the Plan.

**Applicants' Legal Analysis**

1. Section 17(a) of the 1940 Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from the company. Section 2(a)(3) of the 1940 Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% of more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquired Fund and the Acquiring Fund may be deemed affiliated persons and, thus, absent an exemption, the reorganization may be prohibited by Section 17(a).

2. Rule 17a–8 under the 1940 Act exempts from the prohibitions of Section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rules are satisfied.

3. Applicants believe that rule 17a–8 may be unavailable in connection with the reorganization because the funds may be deemed to be affiliated for reasons other than those set forth in the rule. In particular, John Hancock may be an affiliated person of the Acquired Fund, because Acquired Fund shares held by John Hancock and reflecting ''seed money'' that John Hancock has maintained in the Acquired Fund constitute more than 5% of the Acquired Fund's outstanding shares.

4. Section 17(b) of the 1940 Act provides that the Commission may exempt a transaction from the provisions of Section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the 1940 Act.

5. Applicants request an order under Section 17(b) of the 1940 Act exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit applicants to consummate the reorganization. Applicants submit that the reorganization satisfies the standards of Section 17(b) of the 1940 Act. Applicants assert that the proposed reorganization will not in any way affect the price or value of outstanding shares of the Acquired Fund or the Acquiring Fund, nor will it in any way affect the Contract values or interests of Owners. Applicants assert that John Hancock will pay all costs and expenses directly or indirectly associated with the reorganization. Applicants further assert that the investment programs and fundamental investment policies of the Acquired Fund and the Acquiring Fund are identical in all material respects. Finally, Applicants note that investors in the Acquired Fund will have the opportunity to approve or disapprove the reorganization.

6. Applicants believe that such relief is warranted because of (a) the advantages of the reorganization to the Acquired Fund and, to a lesser extent, the Acquiring Fund and, by extension, to the shareholders of and Contract Owners participating in those Funds, coupled with (b) the absence of any foreseeable disadvantages that the reorganization might have for any of them.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31023 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24777]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 30, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–

942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

**Mackenzie Solutions [File No. 811–9107]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On May 5, 2000, applicant made its final liquidating distribution to its shareholders based on net asset value. Expenses of $34,420 incurred in connection with the liquidation were paid by Ivy Management, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on November 7, 2000.

*Applicant's Address:* Via Mizner Financial Plaza, 700 South Federal Highway—Suite 300, Boca Raton, Florida 33432.

**Anchor Gold and Currency Trust [File No. 811–4640]; Anchor Resource and Commodity Trust [File No. 811–8706]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On October 30, 2000, each applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $86,026 and $30,038, respectively, were incurred in connection with the liquidations and were paid by the applicants.

*Filing Date:* The applications were filed on November 6, 2000.

*Applicants' Address:* 579 Pleasant Street, Suite 4, Paxton, Massachusetts 01612.

**Insured Tax Free Income Multi Series I (and Subsequent Multi-Series of the Trust) [File No. 811–4469]**

*Summary:* Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 16, 1999, applicant made its final liquidating distribution to unit holders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Date:* The application was filed on October 23, 2000.

*Applicant's Address:* c/o Van Kampen Funds Inc., Administrator, 1 Parkview Plaza, PO Box 5555, Oakbrook Terrace, Illinois 60181–5555.

**A.G. Series Trust [File No. 811–8912]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 23, 1999, applicant distributed all of its shares at net asset value to its shareholders in connection with applicant's liquidation. Total expenses of $57,130.00 were incurred in connection with the liquidation and were paid by American General Annuity Insurance Company.

*Filing Dates:* The application was filed on August 23, 2000 and amended on November 15, 2000.

*Applicant's Address:* 2929 Allen Parkway, Houston, Texas 77019.

**Norwest Select Funds [File No. 811–8202]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On August 5, 1999, the shareholders of the applicant voted to approve the merger of applicant with another investment company. The name of the funds surviving the merger is Wells Fargo Variable Trust, and its Investment Company Act file number is 811–9255. Expenses of $109,099 were incurred in connection with the merger and were paid by Wells Fargo Bank, N.A., the administrator of Wells Fargo Variable Trust.

*Filing Date:* The application was filed on June 19, 2000, and amended on July 28, 2000 and October 5, 2000.

*Applicant's Address:* Two Portland Square, Portland, ME 04101.

**GT Global Variable Investment Series [File 811–6672]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 1999, GT Global Variable America Fund, a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 18, 1999, GT Global Money Market Fund, a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 22, 1999, GT Global Variable International Fund, GT Global Variable Europe Fund, and GT Global Variable New Pacific Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. The distributions were based on net asset value. Legal expenses of $10,117 incurred in connection with the reorganization were paid by applicant's investment adviser, AIM Advisors, Inc. Accounting and other expenses of $5,387 were paid by applicant.

*Filing Date:* The application was filed on September 26, 2000.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

**GT Global Variable Investment Trust [File 811–7164]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 1999, GT Variable Growth & Income Fund, GT Global Variable Telecommunications Fund, GT Global Variable Strategic Income Fund, GT Global Variable Global Government Income Fund, and GT Global Variable U.S. Government Income Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. On October 22, 1999, GT Global Variable Natural Resources Fund, GT Global Variable Infrastructure Fund, GT Global Variable Latin America Fund, and GT Global Variable Emerging Markets Fund, each a series of applicant, transferred its assets to AIM Variable Insurance Funds, Inc. The distributions were based on net asset value. Legal expenses of $18,368 incurred in connection with the reorganization were paid by applicant's investment adviser, AIM Advisors, Inc. Accounting and other expenses of $7,903 were paid by applicant.

*Filing Date:* The application was filed on September 26, 2000.

*Applicant's Address;* 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31022 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43627; File No. SR–NASD–99–60]**

## Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Trading in Hot Equity Offerings

November 28, 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 November 15, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 2 to the proposed rule change [3] as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice of Amendment No. 2 to solicit comments on the amended proposed rule change from interested persons.

On October 15, 1999, NASD Regulation submitted the proposed rule change to the Commission. On December 21, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 18, 2000.[5] The Commission received twenty-four comment letters on the proposed rule change.[6] NASD Regulation is responding to the comment letters with Amendment No. 2.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to establish NASD Rule 2790, Restrictions on the Purchase and Sale of Initial Equity Public Offerings, to replace the Free-Riding and Withholding Interpretation, IM–2110–1. Below is the amended text of the proposed rule change as proposed in Amendment No. 2. Additions are italicized and deletions are bracketed. (Note: Section (a) ''Definitions'' has been renumbered as Section (i). The comparison of changes to the defintions is located under Section (i).

**Rule 2790. [Trading in Hot Equity Offerings]**

[(b)] *Restrictions on the Purchase and Sale of Initial Equity Public Offerings*

*(a)* General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to [sell,] *be sold,* a [hot] *new* issue [in a public offering] to any account in which a restricted person [or a member of the restricted person's immediate family] has a beneficial interest, except as *otherwise* permitted herein [or through an exemption pursuant to the Rule 9600 Series].

(2) A member or a person associated with a member may not purchase a [hot issue in a public offering, except as permitted herein or through an exemption pursuant to the Rule 9600 Series.] *new issue in any account in which such member or person associate with a member has a beneficial interest, except as otherwise permitted herein.*

(3) A member may not continue to hold [hot issues acquired in a public offering except as permitted herein or through an exemption pursuant to the Rule 9600 Series.] *new issues acquired by the member as an underwriter, selling group member, or otherwise, except as otherwise permitted herein.*

[(c) Canceling Trades

A member or a person associated with a member does not violate this rule if it cancels a sale of a hot issue made to the account of a restricted person or a member of the person's immediate family prior to the end of the first business day following the date that market trading commences (*i.e.,* T+1) and reallocates such hot issue at the public offering price to a non-restricted person.

(d)]*(b)* Preconditions for Sale

Before selling a [hot] *new* issue to any account, a member must *in good faith* have obtained within the [previous] twelve months [documentary evidence] *prior to such sale, a representation* from the account holder(*s*), or a person authorized to represent the beneficial owners of the account [or the ultimate purchasers if the account is a conduit account, demonstrating that no restricted person or ultimate purchasere in the case of a conduit account, has a beneficial interest in the account, except as permitted under the rule. Members], *that the account is eligible to purchase new issues in compliance with this rule. A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member* shall maintain a copy of all records and information [used to determine that] *relating to whether* an account [does not contain a restricted person] *is eligible to purchase new issues* in its files for at least three years following the member's last sale of a [hot] *new* issue to that account.

[(e) General Exemptions] *(c) General Exemptions*

[A member or a person associated with a member may sell hot issues to:] *The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by:*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 14, 2000 (''Amendment No. 2''). In response to the comment letters, Amendment No. 2 was filed to replace the proposed rule change and Amendment No. 1 in their entirety.

[4] *See* Letter from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated December 20, 1999 (''Amendment No. 1''). In Amendment No. 1, NASD Regulation makes certain technical amendments to the proposed rule change.

[5] Securities Exchange Act Release No. 42325 (January 10, 2000), 65 FR 2656.

[6] Letter from Willkie Farr & Gallagher to Jonathan G. Katz, SEC, dated January 28, 2000 (''Willkie''); Letter from Faith Colish to Jonathan G. Katz, SEC, dated January 31, 2000 (''Colish''); Letter from Katten Muchin Zavis to Jonathan G. Katz, SEC, dated January 28, 2000 (''Katten''); Letter from Driehaus Capital Management, Inc. to Jonathan G. Katz, SEC, dated February 4, 2000 (''Driehaus''); Letter from Fu Associates, Ltd. to Jonathan G. Katz, SEC, dated February 7, 2000 (''Fu''); Letter from Cadwalader, Wickersham & Taft to Jonathan G. Katz, SEC, dated February 4, 2000 (''Cadwalader''); Letter from Schulte Roth & Zabel LLP to Jonathan G. Katz, SEC, dated February 7, 2000 (''Schulte''); Letter from Rosenman & Colin LLP to Jonathan G. Katz, SEC, dated February 7, 2000 (''Rosenman''); Letter from Fried, Frank, Harris, Shriver & Jacobson to Jonathan G. Katz, SEC, dated May 9, 2000 (''Fried''); Letter from Ropes & Gray to Jonathan G. Katz, SEC, dated February 8, 2000 (''Ropes''); Letter from The Washington Group to Jonathan G. Katz, SEC, dated February 8, 2000 (''Washington''); Letter from Testa, Hurwitz & Thibeault, LLP to Jonathan G. Katz, SEC, dated February 8, 2000 (''Testa''); Letter from Chicago Board Options Exchange to Jonathan G. Katz, SEC, dated February 14, 2000 (''CBOE''); Letter from Sullivan & Cromwell to Jonathan G. Katz, SEC, dated February 15, 2000 (''Sullivan''); Letter from Charles Schwab to Jonathan G. Katz, SEC, dated February 15, 2000 (''Schwab''); Letter from Sidley & Austin to Jonathan G. Katz, SEC, dated February 16, 2000 (''Sidley''); Letter from North American Securities Administrators Association, Inc. to Jonathan G. Katz, SEC, dated February 18, 2000 (''NASAA''); Letter from Northern Trust Global Advisors, Inc. to Jonathan G. Katz, SEC, dated February 13, 2000 (''Northern''); Letter from Securities Industry Association to Jonathan G. Katz, dated February 18, 2000 (''SIA''); Letter from Morgan Stanley Dean Witter to Jonathan G. Katz, SEC, dated March 17, 2000 (''MSDW''); Letter from Mayor, Day, Caldwell & Keeton, LLP to Jonathan G. Katz, SEC, dated June 2, 2000 (''Mayor''); Letter from Covington & Burling to Jonathan G. Katz, SEC, dated April 14, 2000 (''Covington''); Letter from Orrick, Herrington & Sutcliffe LLP to Jonathan G. Katz, SEC, dated May 2, 2000 (''Orrick''); and Letter from Sandra K. Smith to Jonathan G. Katz, SEC, dated February 1, 2000 (''Smith'').

[(1) A registered investment company] *(1) An investment company registered* under the Investment Company Act of 1940[.];

[(2) A collective investment account (including a joint back office broker/dealer or a collective investment account with a joint back office broker/dealer subsidiary),] *(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Act, provided that:*

*(A) the fund has investments from 1,000 or more trust accounts; and*

*(B) the fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;*

*(3) An insurance company general, separate or investment account, provided that:*

*(A) the account has investments from 1,000 or more policyholders; and*

*(B) the insurance company does not limit beneficial interests in the account principally to restricted persons;*

*(4) An account* that is beneifically owned in part by restricted persons, provided that such restricted persons in *the* aggregate own less than 5% of such account, *and that*:[.]

[(3) A publicly traded corporation (other than an affiliate of a broker/dealer) listed on an exchange or The Nasdaq Stock Market, in which no person with a 10% or more ownership interest in a restricted person.] *(A) each such restricted person does not manage or otherwise direct investments in the account; and*

[(4) A foreign] *(B) on a pro rata basis, each such restricted person who is a natural person receives less than 100 shares of any new issue;*

*(5) A publicly traded entity (other than a broker/dealer) that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders;*

*(6) An* investment company organized under the laws of a foreign jurisdiction, [meeting the following criteria:] *provided that:*

[(A) the company has 100 or more investors;

(B) the](A) *the investment* company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; *and*

(B)[(C)] no *person owning* more than 5% of the *shares of the investment* [company's assets shall be invested in a particular hot issue; and,

(D) no person owning more than 5% interest in such] company is a restricted person[.]*;*

[(5) An employee benefits plan qualified under the] *(7) An* Employee Retirement Income Security Act [provided that the plan sponsor is not a member or an affiliate; or a state or foreign government employee benefit] *benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer;*

*(8) A state or municipal government benefits* plan that is subject to [separate] state [and] *and/or* municipal regulation; *or*[.]

[6]*(9)* A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.

[(7) Employees and directors of the issuer, an entity which controls, is controlled by, or is under common control of the issuer.]

*(d) Issuer-Directed Securities*

[(8) An immediate family member of a restricted person in paragraph (a)(11)(B) if:] *The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:*

[(A) such restricted person does not directly or indirectly provide material support to, or receive material support from, the immediate family member;]

*(1) are specifically directed by the issuer; provided, however, that this exemption shall not apply to securities directed by the issuer to an account in which any restricted person specified in subparagraphs (i)(10)(B) or (i)(10)(C) of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer. Also, for purposes of this subparagraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting securities of the subsidiary;*

[(B) such restricted person is not employed by the member,]

*(2) are part of a program sponsored by the issuer* or an affiliate of the *issuer that* [member, selling the hot issue to the immediate family member; and

(C) such restricted person has no ability to control the allocation of the hot issue.

(9) An immediate family member of a restricted person in paragraphs (a)(11)(C)–(D) if such restricted person does not directly or indirectly provide material support to the member of the immediate family;

(10) A restricted person in paragraph (a)(11)(E) provided that the sale is to an account established for the benefit of bona fide public customers, including insurance company general, separate and investment accounts, and bank trust accounts.

(f) Anti-Dilution Provisions

The restrictions on the sale of hot issued in this rule shall not apply to sales to a restricted person in an initial public offering who] meets the following criteria:

*(a) the opportunity to purchase a new issue under the program is offered to at least 10,000 participants;*

*(b) every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;*

*(c) if not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method;*

*(d) the class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; and*

*(e) sales are not made to participants who are managing underwriter(s), the broker/dealer administering the program (''Administering Broker/Dealer''), the officers or directors of the managing underwriter(s) or Administering Broker/Dealer, or any employee of the managing underwriter(s) or Administering Broker/Dealer with access to non-publicly available information about the new issue; or*

*(3) are directed to eligible purchasers as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.*

*(e) Anti-Dilution Provisions*

*The prohibitions on the purchase and sale of new issues in this rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:*

(1) the restricted person has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the [public] offering;

(2) the sale of the [hot issues] *new issue* to the [restricted person] *account* shall not increase the restricted person's percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement [with the SEC] in connection with the offering;

(3) the sale of [hot issues to the restricted person must not include any special terms; and

(4) the hot issues purchased pursuant to this subsection shall be restricted from sale or transfer for a period of three months following the effective date of the offering.

(g) Conversion Offerings

The rule shall not apply to the sale of securities directed by the issuer of a conversion offering, either on an underwritten or non-underwritten basis, to any person eligible to purchase securities in accordance with the governmental agency or instrumentality having authority to regulate such conversion offering.] *the new issue to the account shall not include any special terms; and*

*(4) the new issue purchased pursuant to this subparagraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.*

*(f) Stand-by Purchasers*

*The prohibitions on the purchase and sale of new issues in this rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:*

*(1) the stand-by agreement is disclosed in the prospectus;*

*(2) the stand-by agreement is the subject of a formal written agreement;*

*(3) the managing underwriter(s) represents in writing that is was unable to find any other purchasers for the securities; and*

*(4) the securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.*

*(g) Under-Subscribed Offerings*

*Nothing in this rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.*

*(h) Exemptive Relief*

*Pursuant to the Rule 9600 series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this rule to the extent that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.*

*(i) Definitions*

(1) [''Affiliate'' shall have the same meaning as in Rule 2720(b)(1). (2) ''Beneficial interest'' means any [ownership or other direct financial interest] *economic interest, such as the right to share in gains or losses.* The receipt of a management or performance based fee for operating a collective investment account shall not be considered a beneficial interest in the account.

[(3)]*(2)* ''Collective investment account'' means any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle [that manages assets of other persons. Collective investment account shall not include any entity in which the decision to buy or sell securities is made jointly by each of the persons investing in the entity or by a member of their immediate family.].

[(4)]*(3)* ''Conversion offering'' means any offering of securities made as part of a plan by which a savings and loan association, insurance company, or other organization converts from a mutual to a stock form of ownership.

[(5) ''Hot issue'' means any security that is part of a public offering if the volume weighted price during the first five minutes of trading in the secondary market is 5% or more above the public offering price.]

*(4) ''Family partnership'' means a partnership comprised solely of immediate family members.*

[(6)]*(5)* ''Immediate family member'' [shall include] *means* a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual *to whom* the person[, directly or indirectly,] provides material support.

[(7) ''Joint back office broker/dealer'' means any domestic or foreign private investment fund that has voluntarily registered as a broker/dealer solely to take advantage of more favorable margin treatment afforded under Section 220.7 of Regulation T of the Federal Reserve. The activities of a joint back office broker/dealer must not require that it register as a broker/dealer under Section 15(a) of the Act.]

*(6) ''Investment club'' means a group of friends, neighbors, business associates, or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.*

[(8)]*(7)* ''Limited business broker/dealer'' means any broker/dealer whose authorization to engage in the securities business is limited solely to the purchase [or] *and* sale of [either] investment company/variable contracts securities [or] *and* direct participation program securities.

[(9)]*(8)* ''Material support'' means *directly or indirectly* providing more than [10%] 25% of a person's income [or expenses. Material support shall be presumed for members] *in the current or prior calendar year. Members* of the immediate family living in the same household *are deemed to be providing each other with material support.*

*(9) ''New issue'' means any initial* [.(10) ''Public offering'' means any initial or secondary] public offering of an equity security as defined in [section] *Section* 3(a)(11) of the Act, made pursuant to a registration statement or offering cicrcular, [including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition,] or other securities distributions of any kind whatsoever, including securities that are specifically directed by the issuer on a non-underwritten basis. [Public offering] *New issue* shall not include:

(A) [Offerings] *offerings* made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of [1993 or SEC Rule 504, 505 or]*1933, or SEC Rule 504 if the securities are ''restricted securities'' under SEC Rule 144(a)(3), or Rule 505 or Rule* 506 adopted thereunder; [and]

(B) [Offerings] *offerings* of exempted securities as defined in Section 3(a)(12) *of the Act;*

*(C) rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;*

*(D) offerings of investment grade asset-backed securities;*

*(E) offerings of convertible securities;*

*(F) offerings of preferred securities; and*

*(G) offerings of securities of closed-end companies as defined under Section (5)(a)(2) of the Investment Company Act of 1940.* (*10*)[(11)] ''Restricted person'' [includes] means:

(A) Members or other broker/dealers[, unless the ultimate purchaser is a non-restricted person purchasing the security at the public offering price;]*;*

[(B) Officers, directors, general partners, employees or agents] *(B) Broker/Dealer Personnel*

*(i) Any officer, director, general partner, associated person, or employee* of a member or any other broker/dealer (other than a limited business broker/dealer)*, or any agent of a member or any other broker/dealer (other than a limited*

*business broker/dealer) that is engaged in the investment banking or securities business;*[;]

[(C)]*(ii) An immediate family member of a person specified in subparagraph (B)(i) if the person specified in subparagraph (B)(i):*

*(a) materially supports, or receives material support from, the immediate family member;*

*(b) is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or*

*(c) has an ability to control the allocation of the new issue.*

*(C) Finders and Fiduciaries*

(*i*) With respect to the security being offered, [finders] *a finder* or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

*(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.*

*(D) Portfolio Managers*

*(i) Any person who has authority to buy or sell*[(D) Any employee or other person who supervises, or whose activities directly or indirectly involve or are related to, the buying or selling of] securities for a bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account, *other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority;* [;]

[(E) Any affiliate of a broker/dealer (other than a limited business broker/dealer); and]*(ii) An immediate family member of a person specified in subparagraph (D)(i) that is materially supported by such person, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority.*

[(F) Any natural person or member of the person's immediate family who owns 10% or more or has contributed 10% or more of the capital of a broker/dealer (other than a limited business broker/dealer).] *Provided, however, that the term ''restricted person'' under this subparagraph (D) shall not include a person solely because he or she is a participant in an investment club or a family partnership.*

*(E) Persons Owning a Broker/Dealer*

*(i) Any person listed, or required to be listed, in Schedule A of a Form BD, except persons with ownership interests of less than 10%;*

*(ii) any person listed, or required to be listed, in Schedule B of a Form BD, except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A with an ownership interest of less than 10%;*

*(iii) any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;*

*(iv) any person that directly or indirectly owns 10% or more of a public reporting company listed on Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders);*

*(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed on Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders).*

*(vi) An immediate family member of a person specified in subparagraphs (E)(i)–(v) unless the person owning the broker/dealer:*

*(a) does not materially support, or receive material support from, the immediate family member;*

*(b) is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and*

*(c) has no ability to control the allocation of the new issue.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

(i) *Background.* In general, NASD Regulation believes that the commenters supported its efforts to reform the Free-Riding and Withholding Interpretation.[7] Several commenters believed that the proposed rule change was a significant improvement over the Interpretation. Testa stated that ''[i]n general, the Proposal presents a much more easily understood and more workable regulatory scheme.'' Kattan and Schwab stated that the proposed rule change was more carefully targeted towards the purpose of the rule while at the same time it was easier for firms, institutional investors and the investing public in general to understand and follow. Katten also added that protecting the integrity of the public offering process is a noteworthy objective that benefits all investors.

As NASD Regulation expected, the commenters supported certain elements of the proposed rule change, opposed others, and made suggestions for further changes. A summary and analysis of the specific comments are provided below.

(ii) *Scope of Securities Covered by the Proposed Rule Change.* The area that generated the most comment was the proposed definition of ''hot issue.'' Currently, under the Interpretation, a hot issue is any security in a public offering that trades at a ''premium'' in the secondary market. In the October 1999 filing, NASD Regulation defined a hot issue as a security that is part of a public offering ''if the volume weighted price during the first five minutes of trading in the secondary market was 5% or more above the public offering price.'' Many commenters supported NASD Regulation's decision to adopt a clear and measurable standard for determining whether an offering is a hot issue, but believed that the 5% threshold was too low. Colish, Driehaus, SIA, and MSDW questioned whether the methodology proposed by NASD Regulation would be effective in identifying those offerings that should be subject to the rule. Colish and Dreihaus added that NASD Regulation should supply data to support its chosen methodology.

By contrast, Schwab and the SIA suggested what they termed a more ''straightforward'' approach: prohibiting

[7] *See, e.g.,* Sullivan, SIA, and Schwab.

allocations of all initial public offerings (''IPOs'') to restricted persons. Schwab stated that even though the Interpretation and the proposed rule change contain a safe harbor for canceling a sale and reallocating the security to a non-restricted account, many firms do not and would not avail themselves of the safe harbor. In practice, Schwab said, under the proposed hot issue definition, firms would continue too treat all IPOs as hot issues. The SIA, which argued in the alternative for a higher threshold premium, agreed and stated that if a 5% threshold were adopted, firms would continue to treat all IPOs as being subject to the rule because they cannot be in a position of having to anticipate which offerings will trade through the 5% threshold.

Based on these comments, NASD Regulation has amended the proposed rule change to restrict the purchase and sale of all initial equity public offerings,[8] not just those that open above a certain premium. Like Schwab and the SIA, NASD Regulation believes that this approach is the most straightforward way to achieve the purposes of the rule. It is both easier to understand and avoids many of the complexities associated with canceling and reallocating the sale of an IPO to a non-restricted person in the event that an offering unexpectedly becomes a hot issue. NASD Regulation disagrees with those commenters who recommended a higher threshold premium, such as 10% or more. In NASD Regulation's view, allocating IPOs with such notable gains (approaching 10% or even more) to restricted persons is precisely the type of conduct that the rule is designed to prevent.

As a corollary to the proposal to apply the proposed rule change to all IPOs, NASD Regulation is proposing to exempt secondary offerings. Many of the commenters opposed NASD Regulation's decision in the October 1999 filing to roll back the exemption for secondary offerings of actively traded securities. As NASD Regulation stated in the October 1999 filing, the decision to roll back the exemption for secondary offerings was premised upon the decision to adopt a 5% threshold premium for hot issues. NASD Regulation believed that with a 5% premium, as a practical matter, all secondary offerings would be exempt from the rule. In proposing to eliminate the requirement for a 5% threshold premium, however, NASD Regulation believes that reinstating the exemption for secondary offerings is now appropriate. NASD Regulation has observed that secondary offerings rarely, if at all, trade at a significant premium to the public offering price. We also agree with Schwab that the negative consequences to both issuers and customers in applying the rule to secondary offerings would outweigh any benefits associated with including such offerings in the proposed rule change.

Schwab, Sullivan and others also recommended that all secondary offerings, not just those that are actively traded, should be excluded from the proposed rule change. NASD Regulation has not observed any unique concerns with respect to secondary offerings of non-actively traded securities. Accordingly, consistent with its objective to develop a more streamlined rule, NASD Regulation has proposed expanding the exemption for secondary offerings to include all secondary offerings.

The decision to apply the proposed rule change to all IPOs, not just those that are hot issues, may lead to problems in offerings for which there is insufficient investor demand. Under the current Interpretation, such offerings would typically not open at a premium and would not be hot issues. With a rule that applies to all IPOs, however, NASD Regulation is proposing to add provisions to address circumstances where purchases by restricted persons are necessary for the successful completion of an offering. Amendment No. 2 contains provisions for stand-by purchasers that are identical to the stand-by provisions in the Interpretation. With respect to the stand-by provisions, MSDW suggested imposing minimum capital contribution requirements and extending the lock-up requirements from three months to one year. NASD Regulation does not believe that these additional requirements are necessary. Amendment No. 2 also contains provisions addressing under-subscribed offerings. Specifically, the proposed rule change states that nothing in the rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

In the October 1999 filing, NASD Regulation targeted the proposed rule change to equity offerings only. Historically, the Interpretation applied to equity and debt offerings; in a series of amendments in 1998, however, NASD Regulation exempted most types of debt. Several commenters, including the SIA and Sullivan, expressed support for the elimination of debt securities entirely from the rule's coverage. These commenters generally believed that debt offerings do not raise the same issues as equity offerings and for that reason should be excluded.

There are a number of other categories of offerings that NASD Regulation does not believe should be covered by the proposed rule change. First, NASD Regulation recommends exempting public offerings of investment grade asset-backed securities as defined in SEC Form S–3, some of which may otherwise fall within the definition of new issue. The Interpretation currently exempts investment grade, financing instrument-backed securities and, in view of the decision to eliminate the 5% threshold, NASD Regulation believes that it is appropriate to reinstate the exemption.

Second, NASD Regulation recommends exempting convertible securities.[9] NASD Regulation staff has already exempted many convertible securities from the Interpretation under its exemptive authority.[10] NASD Regulation found that in light of the Interpretation's current exclusion for debt securities and secondary offerings, the failure to exclude convertible securities led to an anomalous result. A law firm noted that an issuer could issue a non-convertible debt security and make a secondary offering of an actively traded security and neither would be subject to the Interpretation. Yet, if an issuer decided to, in effect, combine these two securities and issue a debt security that had the additional feature of being convertible into an actively traded security, then the Interpretation would apply. To correct this inconsistency, NASD Regulation staff has used its exemptive authority to exempt from the Interpretation debt securities that are convertible into an actively traded security. NASD Regulation now proposes to codify this exemption. However, in view of the decision to exclude all secondary offerings from the proposed rule change, NASD Regulation has expanded the exemption to include all convertible securities, not just those that are convertible into actively traded securities.

Third, NASD Regulation recommends exempting preferred securities. In

[8] Amendment No. 2, like the October 1999 filing, limits the application of the proposed rule change to equity offerings only.

[9] Although the proposed change applies only to equity securities, the definition of equity security in section 3(a)(11) of the Exchange Act, which is used in the proposed rule change, includes any security, including a debt security, that is convertible into stock.

[10] *See* Letter to Peter C. Manbeck, Sullivan, from Gary L. Goldsholle, NASD Regulation, dated December 21, 1998.

connection with amendments to the Interpretation in 1998, NASD Regulation considered, but deferred an exemption for preferred securities.[11] Specifically, NASD Regulation stated that it would ''evaluate the impact of excluding investment grade debt and investment grade financing backed securities from the Interpretation and will consider in the future whether preferred [securities] should also be excluded.''[12] Based upon its experience with the 1998 amendments, and the purposes of the proposed rule change, NASD Regulation now recommends excluding preferred securities. On balance, NASD Regulation believes that preferred securities exhibit pricing and trading behavior that more closely resemble debt than equity securities.

Fourth, NASD Regulation recommends exempting offerings of closed-end company securities as defined under Section 5(a)(2) of the Investment Company Act of 1940 from the restriction of the rule. Generally, when closed-end companies make a public offering they are seeking as large an infusion of capital as possible and will expand the number of shares offered to meet the demand. These shares typically commence trading at the public offering price; if there is a premium, it is very small. Accordingly, applying the proposed rule change to closed-end companies does not further the purposes of the rule and may impair the ability of closed-end companies to obtain capital. NASD Regulation therefore recommends an exemption for closed-end companies.

(iii) *Portfolio Fund Managers.* Another area that generated a significant amount of comment was the proposed definition and treatment of portfolio managers. In the October 1999 filing, NASD Regulation proposed a ''more function-oriented approach'' towards personnel with respect to the securities activities of a bank, insurance company, investment company, investment adviser, or collective investment account. NASD Regulation suggested that only persons who supervise or whose activities are directly or indirectly related to the buying or selling of securities for one of the listed entities should be restricted. Ropes, Testa, and Schwab supported this function-oriented approach, but believed that the proposed rule change was still too broad and could reach persons whose functions were purely ministerial. These commenters suggested that the restrictions in the proposed rule change should apply only to those persons who have ''the authority to make investment decisions.'' Ropes believed that this would be a better and more precise indicator of whether a person is in a position to direct business to a member. NASD Regulation believes that this is a useful clarification and has amended the proposed rule change accordingly.[13]

The proposed rule change also sought to remove the restrictions on persons who participate in an investment club or manage a family partnership. Fu, Sullivan, Smith and Schwab all strongly supported these changes. Fu, the general partner of a small investment club, believed that he had been unfairly restricted access to IPOs because the Interpretation treated an investment club as an ''institutional account.'' Similarly, Smith viewed her participation in an investment club as a ''learning and social activity'' and did not believe that her participation in an investment club should affect her, or her husband's, ability to purchase an IPO. Cadwalader noted, however, that, as drafted, the exemption for investment clubs and family partnerships would inadvertently exempt sales to an investment club or family partnership consisting solely or predominantly of restricted persons. NASD Regulation agrees that this was not an intended result. To correct this problem, the proposed rule change no longer exempts investment clubs or family partnerships per se, but rather states that participation in an investment club or family partnership does not by itself make a person restricted.

A number of commenters, including Willkie, Katten, Washington, and Northern, were strongly opposed to the restrictions on portfolio managers, and in particular hedge fund managers, because they would prohibit a hedge fund manager from investing in hot issues through a fund he or she manages. Although the proposed rule change allowed portfolio managers and other restricted persons in aggregate to own up to 5% of a collective investment account that invests in hot issues, these commenters believed that the 5% figure was too low. They added that investors generally expect portfolio managers to make significant investments in accounts they manage as it helps to align the managers' interests with those of investors. Several commenters, including Rosenman, Willkie, and Northern urged NASD Regulation to exempt hedge fund managers with respect to the accounts they manage, while retaining the restriction with respect to purchases of IPOs in their personal accounts. Northern, for example, stated ''[w]e would not be in favor of letting a hedge fund manager receive benefits on the side that might permit the manager to divert hot issues to his or her own personal account.'' Willkie added that the fiduciary duty of a hedge fund manager would prevent him or her from profiting from new issues personally at the expense of hedge fund investors.

Based upon these comments, NASD Regulation has amended the restriction on portfolio managers. NASD Regulation agrees with the commenters that the 5% exemption in the October 1999 filing did not achieve its intended purpose and could, as discussed below, undermine the purposes of the rule by allowing broker/dealer personnel and other restricted persons to purchase substantial quantities of IPOs. Amendment No. 2 treats a portfolio manager and certain members of his or her immediate family as restricted persons other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment adviser, or collective investment account, over which such person has investment authority. Amendment No. 2 thus permits a hedge fund manager who in not otherwise restricted to invest in IPOs through a fund he or she manages. Under Amendment No. 2, however, a portfolio manager may not purchase IPOs in his or her personal accounts. Several commenters, including Willkie and Rosenman, proposed language that is substantively similar to that proposed by NASD Regulation.

Amendment No. 2 does not define what constitutes a personal account of a portfolio manager. NASD Regulation believes that a number of factors will contribute to a determination of whether an account is a personal account. These factors include, but are not limited to, the number of beneficial owners in the account, the identity of the participants, whether the account participants are members of the portfolio manager's immediate family, the compensation scheme, the manner in which profits and losses are distributed, the expectations of the account participants, and the overall trading activity in the account.

[11] Securities Exchange Act Release No. 40001 (May 18, 1998), 63 FR 28535 (May 26, 1998).

[12] *Id.*

[13] Schwab also requested an exemption for persons who, on a volunteer basis, make investment decisions of behalf of a tax-exempt charitable organization. NASD Regulation is not proposing such an exemption. Depending on the particular facts, NASD Regulation believes the purposes of the rule may be implicated by a person who manages the investments of a tax-exempt charitable organization.

Despite this change, NASD Regulation does not believe that the treatment of portfolio managers in Amendment No. 2 will lead to an environment that is significantly different from that under the current Interpretation. Under the Interpretation, portfolio managers are entitled to purchase hot issues if such purchases are, among other things, consistent with their normal investment practices. They also are entitled to receive benefits from new issues in accounts they manage in the form of performance fees.

Katten sought clarification on whether an investment adviser organized as an entity is a restricted person. Katten stated that the proposed rule change treats certain employees of an investment adviser as restricted but does not state whether an investment adviser organized as an entity is a restricted person. NASD Regulation believes that the status of an entity organized as an investment adviser would depend on the status of its beneficial owners. If the beneficial owners are restricted persons because of their investment advisory activities or otherwise, then the entity would be a restricted person.

(iv) *Preconditions for Sale/ Documentation.* The proposed rule change streamlined the requirements for members to demonstrate that sales of IPOs were made in conformity with the rule. NASD Regulation replaced the myriad means for members to demonstrate that they have not sold IPOs to restricted persons, with a single requirement applicable to all accounts—a representation from the account holder, or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with the rule. Colish supported these changes. The SIA stated that the requirement as to the type of evidence that is needed ''is a significant improvement over current requirements.'' Commenters also had concerns. Schwab and MSDW were concerned that the proposed rule change would require an annual mailing to all customers that may be interested in purchasing new issues and would prohibit the use of electronic communications. The SIA and MSDW stated that firms should be permitted to develop their own methods to verify the status of a customer, including the use of oral representations so long as such representations are documented internally. In response to these comments, NASD Regulation intends to state in a Notice to Members announcing SEC approval of the proposed rule change that an annual mailing is not required, and that electronic or oral communications are permitted so long as such communications and the response are documented internally by the member firm.

MSDW also stated that the documentation requirements may hinder a *bona fide* public distribution if members withhold securities from public customers because they have not provided the necessary information. NASD Regulation disagrees and believes that MSDW's comment may be based on a misinterpretation of the nature of the required documentation. In general, NASD Regulation does not believe that adhering to these requirements, even if it means that certain public customers cannot purchase IPOs, will cause a member to fail to make a *bona fide* public offering. In addition, NASD Regulation expects that public customers will provide the necessary information or certifications to afford them the opportunity to purchase IPOs.

NASD Regulation also is maintaining the interval required for verification at one year. The SIA, Sullivan, and MSDW suggested lengthening the verification period from one year to every two or three years. By contrast, NASAA suggested shortening the verification period to something significantly shorter than one year, to reflect possible changes in ownership that could occur within that period. NASD Regulation believes that as a matter of policy, allowing members to wait longer between verifying that their customers are eligible to purchase new issues undermines the effectiveness of the rule. Currently, under the Interpretation, verification is required as frequently as before every sale or as long as every 18 months. With the streamlined documentation procedures and the availability of electronic and oral communications, NASD Regulation believes that an annual verification requirement strikes an appropriate balance between benefit and burden. We anticipate that in light of the clarifications made above, the commenters generally will agree with NASD Regulation that the burdens of ensuring that customers are eligible to purchase IPOs on an annual basis are not unreasonable. NASAA's concerns are addressed by the fact that a member may not rely on a representation that it has reason to believe is inaccurate.

Several commenters, including Cadwalader and Ropers, were concerned about how the documentation requirement would apply in light of the fact that a customer's status or percentage ownership in a collective investment account may change over the course of a year. NASD Regulation recognizes that the potential exists for a customer's status under the rule to change, but believes that members may rely upon information obtained as part of the ordinary, annual verification process, so long as the member does not believe or have reason to believe that an account is restricted. Currently, under the Interpretation, NASD Regulation allows members to rely upon certain certifications dated not more than 18 months prior to the date of sale of the hot issue. Under the proposed rule change, members would be able to rely, in good faith, on representations dated not more than twelve months prior to the date of sale of the new issue.

On the issue of intent, Schwab stated that the rule should not impose a strict liability standard. Specifically, Schwab believed that a member should not be in violation of the proposed rule change if the member is unaware that an account is beneficially owned by a restricted person because the customer provided false information. On this point, we agree. As stated in the October 1999 filing, a member may rely upon the information it has received from a customer unless it believes, or has reason to believe, that the information is inaccurate. The proposed rule change has been amended to expressly include this standard.

Several commenters, particularly law firms such as Katten, Schulte, Rosenman, and Sullivan, sought guidance on what type of information a member would be required to review to determine whether an account is beneficially owned by restricted persons, especially in a fund of funds context. The proposed rule change allows an account holder, or a person authorized to represent the beneficial owners of the account, to represent that an account is eligible to purchase new issues. So long as a member has no reason to believe that the representation is not accurate, it may rely upon the representation. Alternatively, a registered representative may ask questions of a customer to allow him or her to determine whether an account is eligible to purchase new issues under the rule. The application of the rule would be the same for a fund of funds. In that case, a member could secure a representation from a person authorized to represent the beneficial owners of the fund that is purchasing the new issue from the member (such as the fund's general partner) that the account is eligible to purchase new issues. Naturally, the ability of a general partner to make such a representation will be contingent on his or her

receiving similar representations from general partners of the other funds investing in the fund, or by reviewing information about the investors in such funds. However, unlike the current Interpretation, there are no provisions requiring certifications by attorneys or certified public accountants. While members may wish to rely upon counsel or an accountant to investigate the status of an account, such an approach is no longer required by the rule.

NASD Regulation will announce in the Notice to Members announcing approval of Rule 2790 that members may use negative consent letters in all but the initial account verification. Several commenters, including MSDW, believed that the ability to use negative consent letters would greatly ease the burden of complying with the rule without undermining its effectiveness. NASD Regulation believes that once a member firm verifies the status of an account, it may use negative consent procedures for each subsequent, annual verification.

Finally, the SIA asked NASD Regulation to explore an automated means of updating certain account information regarding restricted person status. While NASD Regulation does not currently intend to develop such a system, NASD Regulation is not opposed to third party vendors compiling or aggregating information about the status of persons under the rule. If a private vendor developed a reliable automated application to track the status of purchasers under the rule, NASD Regulation believes that members generally could rely upon data from such a vendor.

(v) *De Minimis Exemption.* As stated above, one purpose behind the proposed rule change is to streamline the rule. One area in which NASD Regulation believes that it can benefit investors without sacrificing the integrity and protections of the rule is with respect to certain *de minimis* owners. The *de minimis* ownership exemption avoids imposing on investors the burden of creating segregated accounts in those instances where restricted persons have only a nominal and passive interest in an account that purchases new issues. Commenters appreciated the efficiencies that the *de minimis* exemption would provide and generally urged that it be expanded.

Several commenters asked NASD Regulation to expand the *de minimis* exemption to include a collective investment account that is owned 10% or more by restricted persons. NASD Regulation, however, does not support an expansion. One of the rationales for the *de minimis* exemption was to alleviate the impact of the October 1999 filing's decision to treat portfolio managers as restricted persons. As discussed in the previous section, that issue has been addressed separately. Thus, a large class of persons for whom the *de minimis* exemption was intended have already been excluded from the rule. In view of this change, NASD Regulation is maintaining the *de minimis* level at 5%. This comports with recommendations by Katten, Schulte, and Rosenman, which supported a 5% de mimimis level so long as portfolio managers were excluded.

Northern noted that as originally proposed, the *de minimis* exemption may ''tempt some brokers to favor hedge funds that permit the brokers themselves or their senior executives or friends to invest in the hedge funds, which would cut against the purposes of the NASD proposal.'' In response to this comment and to ensure that the *de minimis* exemption is consistent with the purposes of the rule and the public interest, NASD Regulation has revised the *de minimis* exemption to impose a strict numerical limit of 100 shares on the number of shares that any one person can purchase under the *de minimis* exemption. In complying with the 100 share limit, members may look through an investing entity to a person's beneficial interest. The numerical limit reduces the incentive for self-dealing and the appearance that restricted persons are receiving shares at the expense of public investors. Under Amendment No. 2, the *de minimis* exemption also requires that a restricted person does not manage or otherwise direct investments in the account.

Members should be aware that the de minimis exemption does not allow restricted persons to purchase 100 shares directly. The *de minimis* exemption was developed as an accommodation to collective investment accounts with only a small percentage of restricted persons. Because the sale of IPOs to such a collective investment account principally benefits non-restricted persons, NASD Regulation believes, for administration purposes, it should not be necessary to carve-out the restricted persons or exclude the account altogether. On the other hand, direct purchasers of IPOs by restricted persons do not in any way facilitate a public distribution and will continue to be prohibited under the proposed rule change.

Several commenters, such as Cadwalader, Ropes, Covington, and Fried, suggested a variation on the *de minimis* exemption in that the proposed rule change should be amended to exempt all passive investors in a collective investment account, regardless of the size of their interest. While passive investors have no control over the investment decisions made by a collective investment account, their participation in a particular account may be known or inferred by the member allocating new issues. A passive investor exemption would allow restricted persons to circumvent the purposes of the rule by having such purchases made on their behalf by a portfolio manager. For these reasons, NASD Regulation is not proposing to exempt all passive investors.

NASD Regulation also disagrees with MSDW's recommendation that the *de minimis* exemption be amended to apply if a collective investment account invests less than 10% of its assets in new issues. For many collective investment accounts, and certainly all large accounts, such a limitation would be tantamount to no limitation at all. MSDW's recommendation would allow a fund comprised solely of broker/dealer personnel to invest up to 10% of their assets in new issues. NASD Regulation believes that such an expansion of the *de minimis* exemption is unwarranted and would be inconsistent with the purposes of the rule.

Sidley asked whether the proposed rule change and the creation of the *de minimis* exemption eliminated the ability for collective investment accounts to create carve-out accounts that segregate the interests of restricted persons. NASD Regulation did not intend for the proposed rule change to eliminate the ability of a collective investment account that does not meet the *de minimis* exemption to create a separate account and carve out the interests of restricted persons from the account investing in new issues. Accordingly, an account that wishes to purchase a greater number of shares such that a restricted person's *pro rata* allocation would exceed 100 shares, or an account that wishes to allow restricted persons to own collectively more than 5% of the fund's assets, would be able to use carve-out procedures and segregate the new issue activity from restricted persons to keep it below the threshold in the proposed rule. However, unlike the current Interpretation, the proposed rule change does not contain detailed procedures concerning how an account is required to carve-out the interests of restricted persons. A member's obligation under the proposed rule change is to receive a representation from the account holder, or a person authorized to represent the beneficial owners of the account, that the account is not

restricted from purchasing new issues under the rule. At this time, NASD Regulation does not intend to regulate the manner in which an account carves out restricted persons. If NASD Regulation has reason to believe that closer scrutiny of carve-out accounts is necessary, it will consider additional rulemaking in this area.

Sidley also asked NASD Regulation to revise the proposal to permit funds to transfer securities from a carve-out account to a general account without undertaking a secondary market transaction, which it argued is inefficient and unnecessarily costly. Sidley correctly noted that current NASD Regulation policy requires a transfer from a carve-out account with non-restricted persons to a fund's general account that is beneficially owned by restricted person to be effected in a market transaction. Under the proposed rule change a fund manager would be permitted to determine how best to transfer new issues that he or she intends to keep for investment purposes from one account to another, consistent with all other applicable laws and regulations. NASD Regulation cautions that where a carve-out account purchases new issues with a view towards distributing such shares to another account, that such carve-out account may be viewed as an ''underwriter'' under section 2(a)(11) of the Securities Act of 1933.

(vi) *Owners of Broker/Dealers.* NASD Regulation has substantially revised the restrictions on owners of broker/dealers. The October 1999 filing treated as restricted persons affiliates of a broker/dealer and natural persons, and certain members of their immediate family, who owned 10% or more, or contributed 10% or more of the capital of a broker/dealer. Many of the commenters, including Willkie, Colish, Sidley, and the SIA, stated that this approach was too broad. Several commenters stated that reaching all companies that are under common control with a broker/dealer, and in particular sister companies, would reach entities without any nexus to the securities industry. The commenters also were concerned about the impact on affiliates in light of the repeal of the restrictions on affiliation among banks, insurance companies and securities firms under the Gramm-Leach-Bliley Act of 1999.[14]

Amendment No. 2 adopts a new approach and treats as restricted persons owners of broker/dealers as defined in Schedule A of Form BD, with at least a 10% ownership interest,[15] and as defined in Schedule B of Form BD. NASD Regulation believes that this approach is desirable from a compliance perspective because the definitions are understood by members and the information is already required to be maintained. NASD Regulation opted to use existing ownership standards rather than create a new concept for purposes of this rule. From a technical standpoint, this approach no longer treats affiliates of broker/dealers as restricted persons per se. The ownership provisions look only at the direct and indirect owners of a broker/dealer. Moreover, the standard of control for indirect owners in Schedule B of Form BD is a 25% interest, not a 10% interest as proposed in the October 1999 filing. In this regard, Amendment No. 2 is narrower in scope than the October 1999 filing.

The rationale for applying the rule to owners of broker/dealers is straightforward. A prohibition on a broker/dealer could be easily circumvented if IPOs could be purchased by the broker/dealer's parent. Similarly, to avoid circumventing the restriction on the owners and the broker/dealer itself, it is necessary for the rule to prohibit sales of new issues to any account in which the owner or broker/dealer has a beneficial interest. If the rule did not restrict any account in which a restricted person had a beneficial interest, restricted persons could purchase new issues in downstream affiliates and flow the profits back up to the restricted person. The application of the rule to all accounts in which a restricted person has a beneficial interest is a fundamental principle of the proposed rule change and the Interpretation.

The net effect of these provisions is that both upstream and downstream affiliates, including sister companies, are restricted persons. Although commenters may view this approach as unnecessarily broad, NASD Regulation believes that it is necessary to effectuate the purposes of the rule. However, NASD Regulation has made a number of reforms that we believe address many of the commenters' concerns.

The primary source of relief comes from NASD Regulation's decision to exempt sales to and purchases by nearly all publicly traded companies. The commenters generally supported the exemption in the October 1999 filing for publicly traded companies. Sullivan, for example, stated ''that a blanket exemption * * * for sales to publicly traded corporations would substantially lighten the administrative burden of implementing the rule without undermining the underlying objectives of the rule in any meaningful way.''

Amendment No. 2 expands the exemption for publicly traded companies to now include all publicly traded companies listed on a national securities exchange or traded on the Nasdaq National Market, even those that are affiliates of a broker/dealer.[16] NASD Regulation believes that purchases of new issues by this class of publicly traded companies, which in turn have broad public ownership and whose securities may be purchased by any investor, is not the type of activity the rule is designed to prevent. Purchases in these instances benefit public investors in much the same way that IPO purchases by mutual funds benefit their shareholders. To ensure that purchases by publicly traded companies do in fact benefit their shareholders, the exemption requires that the gains or losses from the IPOs must be passed on to shareholders.

The decision to exempt publicly traded companies in Amendment No. 2 greatly minimizes the rule's impact on many financial services conglomerates and industrial companies that own a broker/dealer. Where the owner is a publicly traded company with a broker/dealer subsidiary, the rule would no longer apply, either at the parent level or at the downstream affiliate level. Thus, for example, a manufacturing unit of an exchange listed financial services holding company would not be a restricted person. For publicly traded companies, therefore, Amendment No. 2 would exempt sales to and purchases by affiliates.

NASD Regulation is not, however, expanding the exemption for owners of broker/dealers that are private companies. The purchase of IPOs in this case does not reach public investors because ownership of private companies is not open to the public. NASD Regulation also is not expanding the exemption to include owners of broker/dealers listed solely on a foreign

[14] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[15] Schedule A of Form BD lists all direct owners with ownership interests of 5% or more in a broker/dealer. The ownership level is indicated by various ''ownership codes'': A for 5% but less than 10%, B for 10% but less than 25%, and so on. For purposes of Rule 2790, only persons with a 10% or more interest, as indicated by ownership codes B and higher will be restricted persons.

[16] The exemption does not apply to a broker/dealer itself. NASD Regulation continues to believe that broker/dealers, even publicly traded broker/dealers, should not purchase or withhold IPOs. As discussed below, NASD Regulation believes that an exemption for publicly traded companies, even affiliates of a broker/dealer, was appropriate in light of protections against self-dealing under NASD Rule 2750, which applies to related persons of the broker/dealer, but not the broker/dealer itself.

exchange. Sidley was concerned that limiting the exemption to publicly traded companies listed on a domestic exchange would disadvantage publicly owned foreign companies without a U.S. listing. Despite these concerns, NASD Regulation does not believe at this time that foreign publicly traded companies should be exempt from the proposed rule change. Foreign jurisdictions have various listing standards and levels of regulatory oversight. As such, there is greater potential that a foreign publicly traded company could be used to circumvent the purposes of the rule. NASD Regulation will, however, consider its experience under the proposed rule change and may in the future consider whether it is appropriate to extend the exemption to publicly traded companies listed or traded solely on foreign markets.

Amendment No. 2 also contains an exemption for the purchase of new issues by a bank common trust fund or an insurance company general, separate or investment account, provided that the account has investments from 1,000 or more investors, and is not limited principally to restricted persons. These exemptions will allow, for example, private banks and mutual and private insurance companies with broker/dealer subsidiaries to purchase new issues for these accounts. NASD Regulation believes that, collectively, these restrictions on the owners of broker/dealers will address many commenters' concerns about the application of the rule to broker/dealer affiliates.

The SIA was concerned that the proposed rule change would adversely affect ''asset management affiliates that manage discretionary accounts as well as accounts for unaffiliated persons.'' The SIA stated that to the extent that affiliates of broker/dealers become restricted persons under the rule, the rule should more clearly exempt certain classes of accounts maintained by broker/dealers affiliates. The SIA's concerns appear unfounded. To the extent that broker/dealers affiliates manage accounts for non-restricted persons, such accounts would not be restricted under the proposed rule change. On the other hand, if the SIA is concerned about accounts at broker/dealers affiliates that are owned by restricted persons, NASD Regulation believes that the rule should apply.

In proposing to allow purchases by publicly traded companies that are affiliates of broker/dealers, NASA Regulation is relying in part on the restrictions on a member engaged in a fixed price offering under Rule 2750, Transactions with Related Persons. Specifically, Rule 2750 prohibits a member from selling any securities in a fixed price offering to any person or account that is a related person of the member. NASD Regulation believes that Rule 2750 addresses the potential for self-dealing in allocating new issues to a publicly traded affiliate of a broker/dealer.

Finally, Sullivan asked why immediate family members of owners of broker/dealers were treated differently than immediate family members of associated persons of a broker/dealer. NASD Regulation did not intend for different treatment of such family members and has corrected the proposed rule change.

(vii) *Beneficial Interest Definition.* At its own initiative, NASD Regulation is revising the definition of ''beneficial interest.'' The term beneficial interest was defined in the October 1999 filing as ''any ownership or other direct financial interest.'' NASD Regulation is aware that members found the reference to ownership as distinct from a financial interest misleading. Because the rule is intended to prohibit sales of new issues to certain persons who stand to profit from them, legal ownership, such as that held by a trustee for beneficiaries, or a hedge fund for its limited partners, is not the type of interest that is the focus of the rule.

NASD Regulation also is recommending eliminating the term ''direct'' from the definition. In determining whether an account is beneficially owned by restricted persons, members are often required to look through a number of investment vehicles. For instance, if Fund A invests in Fund B, a member may not sell new issues to Fund B unless it determines the sale is consistent with the rule, taking into account the status of each beneficial owner of Fund A. To some, the owners of Fund A may be viewed as having an ''indirect'' ownership in Fund B.

Rosenman stated that the definition of beneficial interest should specifically exclude management or performance based fees that are deferred for bona fide taxation reasons. Rosenman was concerned of the effect that deferred management or performances fees may have on a hedge fund manager's interest in a collective investment account that he or she manages. Because NASD Regulation has eliminated the restrictions on a hedge fund manager with respect to a collective investment account that he or she manages, we do not believe it is necessary to amend the definition of beneficial interest as Rosenman suggests.

Finally, as a result of the amendments to the definition of beneficial interest and the definition of restricted person, the conditions that gave rise to the need for the exemption for joint back office broker/dealers in the October 1999 filing have been removed. By clarifying that beneficial ownership means a financial interest, such as the right to share in gains or losses, we have clarified that a hedge fund broker/dealer's legal ownership of securities does not constitute a beneficial interest for purposes of the rule. As a result, the rule no longer needs a separate exemption for joint back office broker/dealers.[17]

(viii) *Issuer-Directed Share Programs.* In the October 1999 filing, NASD Regulation proposed amendments to the exemption for securities distributed as part of an issuer-directed share program to all employees and directors of the issuer, or an entity that controls, is controlled by, or is under common control with the issuer. NASD Regulation proposed expanding the scope of employees and directors of the issuer that are covered by the exemption to include employees and directors of sister companies. NASD Regulation also proposed eliminating the requirement for a three-month lock up for those issuer-directed shares that are sold to restricted persons. Schwab supported the elimination of the lock-up and stated that it provides substantive relief to members who will no longer be required to investigate the status of employee or director participants.

Issuer-directed share programs are a valuable tool in employee development and retention, and are often an integral part of the employer/employee relationship. In recent years, issuer-directed share programs have become more popular, and issuers have sought to expand the lists of persons invited to participate in an IPO to include business contacts, family and friends. In general, NASD Regulation believes that sales directed by an issuer are outside the scope of activities that the proposed rule change is designed to address. Accordingly, Amendment No. 2 proposes to exempt IPO shares that specifically are directed by the issuer to such persons as employees, directors, and friends and family of the issuer. NASD Regulation believes, however, that whether directed by the issuer or

[17] The rationale for the joint back office broker/dealer exemption was that a collective investment account registered as a broker/dealer or with a broker/dealer subsidiary would be precluded from purchasing new issues even if none of its investors were restricted persons. Under the revised definition of beneficial interest, such a collective investment account would no longer be restricted.

otherwise, broker/dealers, broker/dealer personnel and their immediate family, and certain persons acting as finders or in a fiduciary capacity to the managing underwriter, should not purchase IPOs, unless such persons are employees or directors of the issuer, the issuer's parent, or a subsidiary of the issuer or members of the immediate family of an employee or director of the issuer.[18] Similarly, NASD Regulation disagrees with MSDW that all non-underwritten securities directed by the issuer should be exempt from the proposed rule change. NASD Regulation believes that a general exclusion for all issuer-directed or all non-underwritten securities would be readily susceptible to abuse. Consequently, NASD Regulation will continue its practice of holding a managing underwriter responsible for ensuring that all securities that are part of the public offering are distributed in accordance with the rule.

As recommended by Testa, the proposed rule change now expressly states that for purposes of the issuer-directed exemption only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security or has the power to sell or direct 50% or more of a class of voting securities of the subsidiary. NASD Regulation does not agree with Sullivan that a 10% ownership standard should apply for this exemption. NASD Regulation believes that it is not uncommon for a member through its merchant banking activities or otherwise to make venture capital investments in issuers that exceed 10% of the issuer's securities. In such cases, all employees of the member would be able to purchase the new issue. NASD Regulation does not believe that exempting broker/dealer personnel by virtue of venture capital investments is consistent with the purposes of the rule or the issuer-directed exemption.[19]

NASD Regulation believes that Amendment No. 2 strikes the correct balance between providing issuers with flexibility to direct shares while preserving the objectives of the rule. NASD Regulation also believes that the issuer-directed exemption should apply only when shares are in fact directed by the issuer; if a member firm asks or otherwise suggests that an issuer direct securities to a restricted person, NASD Regulation does not believe that such securities should be exempt from the rule.

Sidley suggested that the scope of permissible purchasers under the issuer-directed share provisions should be amended to conform with the permitted categories of offerees set forth in Rule 701 of the Securities Act of 1933. Rule 701 provides an exemption for private companies to sell securities to their employees without a need to file a registration statement. Rule 701 provides an exemption from the registration provisions of the Securities Act of 1933 for offers and sales of securities under certain compensatory benefit plans or written agreements relating to compensation. NASD Regulation believes that this approach is potentially less broad and is far more difficult for members to implement.

The SIA, Sullivan, and MSDW all believed that the proposed rule change should exclude exchange offers, rights offerings and offerings made pursuant to a merger or acquisition. MSDW stated that ''[i]f rights or other securities are offered to existing shareholders, particularly shareholders of a publicly traded company, it would seem the purpose of the [proposed rule change] (*i.e.,* to assure a bona fide public distribution of securities) is achieved.'' Sullivan noted that the NASD has previously stated that the Interpretation does not apply to ''exchange offers'' and ''offerings made pursuant to an merger or acquisition.'' SIA and MSDW noted with approval the exemptive relief NASD Regulation staff has granted in connection with certain rights offerings. NASD Regulation agrees with the commenters and has amended the proposed rule change to exclude from the definition of public offering, exchange offers, rights offerings and offerings made pursuant to a merger or acquisition. NASD Regulation also has codified the staff's existing exemptive positions regarding certain directed share programs. The conditions imposed on such offerings in the proposed rule change generally tract those in the exemptive letters and continue to ensure that these offerings are conducted in a manner that is consistent with the purposes of the proposed rule.

(ix) *Limited Business Broker/Dealers.* The proposed rule change, like the Interpretation, does not apply to persons associated with a limited business broker/dealer. The proposed rule change defined a limited business broker/dealer as a broker/dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities. Several commenters believed that this definition was too narrow. The CBOE believed that its market-makers and floor brokers also should be treated as limited business broker/dealers.[20] The CBOE stated that ''[a]n options market-maker typically is not a professional equities trader and is generally removed from the equities side of trading.'' The CBOE also stated that the ''functions of a floor broker on the CBOE * * * are limited to the execution of orders for other market professionals or public customers of other broker/dealers. Floor brokers, with the exception of a transaction effected for their error accounts, do not effect principal transactions.'' Despite these limited activities, NASD Regulation does not believe that market-makers and floor brokers should be treated as limited business broker/dealers. Notwithstanding the limited nature of their activities, NASD Regulation believes that market-makers and floor brokers are in a position to direct business to a member. The CBOE also appeared to recognize the potential for these individuals to direct business to a member in seeking to exclude from the exemption an ''IPO [that] is underwritten by the broker/dealer which clears and carries the member's professional CBOE business.'' NASD Regulation also believes that the relationships between market-makers and member firms and floor brokers and member firms, even in the absence of an established clearing relationship, may give rise to preferential allocations of new issues. Moreover, the potential to direct business to a member in exchange for IPOs is just one of the reasons for restricting broker/dealers. As noted in the October 1999 filing, the proposed rule change also is designed to ensure that industry insiders do not take advantage of their insider position in the industry to purchase IPOs for their

[18] NASD Regulation proposes allowing an employee or director of an issuer to direct shares in the issuer's initial public offering to members of his or her immediate family, even if such persons are otherwise restricted persons. In recent years, the staff has been presented with situations in which, for example, an employee of a issuer wanted to direct shares to his or her parent, but was unable to do so because the parent was a restricted person (and not an employee or director of the issuer). As amended, the proposed rule change would allow directed shares to be sold to, for example, a parent of an issuer's employee.

[19] The proposed rule change contains separate provisions that permit venture capital investors to participate in IPOs to avoid dilution in a public offering. NASD Regulation believes that going beyond these protections for venture capital investors would be inconsistent with the purposes of the proposed rule change.

[20] The CBOE also stated that members that lease out their seats and who are not engaged in a securities business should not be restricted persons. NASD Regulation agrees. NASD Regulation does not believe that a person who merely leases out a seat to a broker/dealer should be treated as a restricted person.

own benefit at the expense of public customers. NASD Regulation believes that options market-makers and options floor brokers are integral to the functioning of an exchange and properly characterized and perceived as industry insiders.

Colish, Washington, and Fried also believed the definition of limited business broker/dealers should be expanded. They suggested including broker/dealers that do not have any involvement in the capital formation or underwriting business, such as market-makers and electronic communications networks. Colish suggested including broker/dealers that engage in private placements. Washington suggested that the proposed rule change should apply only to broker/dealers that engage in an equity securities business.[21] NASD Regulation disagrees. NASD Regulation believes that persons associated with members engaged in these activities are, like persons associated with other broker/dealers, in a position to direct business to, and to enter into reciprocal arrangements with, other members. They also are industry insiders. While it is undoubtedly true that not every person associated with a member engaged in these activities is in a position to enter into reciprocal arrangements, many persons are. The proposed rule change, like the current Interpretation, is a prophylactic rule. It achieves its goals by applying across a class of persons to whom sales of IPOs may violate the purposes of the rule.

In general, the SIA agreed with NASD Regulation that reciprocal arrangements between industry members in the allocation of public offerings must be prevented. The SIA, however, stated that a rule targeted towards ''conduct which has the purpose or effect of creating reciprocal arrangements, rather than one [that is] * * * based on complex definitions of status in the industry, would better serve the capital markets and would be more fair to industry members, their relatives, and other market participants.'' The SIA did not offer any suggestion on how such a rule would operate in practice. NASD Regulation believes that a rule that requires members to determine whether a particular individual is engaged in reciprocal arrangements with a broker/dealer would be difficult both from an administration and examination standpoint, and would eliminate the certainty sought by the proposed rule change.

(x) *Elimination of Conditionally Restricted Persons.* Another significant reform in the proposed rule change was the elimination of the so-called ''conditionally restricted'' status[22] and the decision to treat persons as either restricted or non-restricted. Commenters generally supported the decision to eliminate the conditionally restricted status. The proposed rule change continues to treat persons as either restricted or non-restricted as NASD Regulation continues to believe that this bright-line approach best serves investors and members.

(xi) *ERISA Plans.* NASD Regulation has further simplified the restrictions on Employee Retirement Income Security Act (''ERISA'') plans. The October 1999 filing proposed exempting tax-qualified plans under ERISA, so long as such plans were not sponsored by a broker/dealer or an affiliate. A number of commenters, including SIA, MSDW, and Sullivan, believed that this exemption was unnecessarily narrow and would exclude a large number of non-restricted plan participants in plans sponsored by financial services companies. The commenters added that ERISA plans are already subject to a separate regulatory scheme and that they were unaware of any perceived or actual abuses to cause NASD Regulation to narrow the exemption for ERISA plans from the current Interpretation.

NASD Regulation agrees with the commenters that the treatment of ERISA plans in the October 1999 filing could reach many non-restricted persons participating in a plan sponsored by an affiliate of a broker/dealer. Amendment No. 2 exempts an ERISA plan that is qualified under section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer.

(xii) *Foreign Investment Companies.* The October 1999 filing proposed an exemption for foreign investment companies that is substantially similar to the Interpretation. Specifically, it stated that a foreign investment company is exempt from the proposed rule change if: (1) It has 100 or more investors; (2) it is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; (3) no more than 5% of its assets are invested in a particular hot issue; and (4) no person owning more than a 5% interest in such company is a restricted person.

MSDW suggested exempting all foreign investment companies that are traded on a ''designated offshore securities market'' as defined in Rule 902(b) under the Securities Act of 1933.[23] NASD Regulation believes that such an exemption would be too broad. The standards for inclusion in Rule 902(b) do not appear related to the concerns underlying the proposed rule change. Although inclusion in Rule 902(9b) requires oversight by a governmental or self-regulatory body, NASD Regulation is not confident that such regulation would prevent restricted persons from suing foreign investment companies to circumvent the rule. The NASD continues to believe that it is often difficult to assess the comparability of a foreign country's investment company statutes and regulation to those in the United States, particularly as it relates to the purposes of this rule, and believes, therefore, that it is necessary to impose certain conditions.

Colish and Sullivan suggested that NASD Regulation eliminate the fourth condition—a requirement that no person owning more than 5% of the foreign investment company is a restricted person—because it is often difficult to ascertain the ownership of a foreign investment company. Despite these concerns, NASD Regulation believes that this requirement is necessary to avoid purchases of new issues by funds with concentrated ownership interests of restricted persons.

However, in response to concerns generally about the exemption for foreign investment companies, NASD Regulation has simplified the exemption by eliminating the 100 person requirement and the limitation on the size of the purchase in relation to the size of the investment company. The 100 person condition basically

[21] These requests are similar to requests previously considered by NASD Regulation. As noted in Notice to Members 97–30, NASD Regulation continues to believe that persons associated with firms engaged solely in proprietary trading or investment or merchant banking activities may enter into reciprocal arrangements with other members that would violate the purposes of the rule. In Notice to Members 97–30, NASD Regulation stated that the limited business broker/dealers definition should not be expanded to include such firms ''because of the difficulty in defining those firms'' and because ''such broker/dealers may influence or be involved in various aspects of the underwriting process.'' Further, NASD Regulation was concerned that ''such firms may enter into reciprocal arrangements with other members that would violate the intent of the Interpretation.''

[22] Under the Interpretation, conditionally restricted persons can purchase hot issues ''if the member is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice, that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount.''

[23] This is similar to a request made during the 1994 rulemaking when the exemption for foreign investment companies was first proposed.

addressed the same concerns about concentration of ownership as condition (4) and, therefore, was eliminated. The limitation on the size of the purchase in relation to the size of the investment company appeared unnecessary and was potentially burdensome for members to calculate. Moreover, for very large funds, the limitation was meaningless inasmuch as 5% of their total assets would often exceed the size of the entire IPO. The other conditions are maintained.

(xiii) *Minor or Technical Revision.* In addition to the changes discussed above, NASD Regulation made a number of minor or technical amendments in response to the comment letters.

Testa stated that the anti-dilution provisions, which were similar in scope to the venture capital provisions of paragraph (g) of the Interpretation, applied to natural persons only. Testa believed that entities as well as natural persons that have a prior equity ownership interest in an issuer, should be able to avail themselves of the anti-dilution provisions. The omission of entities in the anti-dilution provisions was inadvertent and has been changed. The anti-dilution provisions thus allow an entity or a natural person investing in such entity to retain the percentage equity ownership in the issuer at a level up to the ownership interest as of three months prior to the filing of the registration statement.

Testa also stated that, as a general matter, family members of a restricted person who receive ''material support'' from the restricted person should be treated similarly to the restricted person. Testa noted that the proposed rule change in some cases made an exemption for a restricted person to purchase new issues, but did not extend the exemption to the restricted person's immediate family members. NASD Regulation believes that an exemption for a restricted person also should be available to an immediate family member who is restricted under the rule, and it has amended the proposed rule change accordingly.

Several commenters, including Colish and Washington, stated that the use of the word ''includes'' in the definition of restricted person creates uncertainty by suggesting that the list is non-exclusive. NASD Regulation agrees and has removed the word ''includes'' from the definition of restricted person.

Schwab stated that the definition of restricted person should exlude consultants or contractors of a broker/dealer member who are not engaged in securities-related activities. Schwab stated that the policy concerns underlying the rule do not require restricting these individuals from participating in new issues. NASD Regulation agrees that consultants or contractors of a broker/dealer should not be restricted persons unless they are engaged in the investment banking or securities business. If, for example, Schwab hires a contractor or consultant to perform photocopying services or a compensation survey, it should not preclude such contractor or consultant from purchasing new issues. The definition of restricted person has been revised to exclude agents of a broker/dealer who are not engaged in the investment banking or securities business.

Schwab also supported the addition of a bright line definition of ''material support'' but believed that the 10% threshold for support is too low and recommended that a time frame be established for measuring support. NASD Regulation agrees and has revised the definition of ''material support'' to providing more than 25% of a person's income in the current or prior calendar year. Separately, NASD Regulation recommends clarifying that members of the immediate family living in the same household will be deemed to be providing each other with material support. Using this language makes clear that the proposed rule change establishes a bright line test, and NASD Regulation will not evaluate material support issues on a case-by-case basis.

2. Statutory Basis

NASD Regulation believes that Amendment No. 2 is consistent with the provisions of section 15A(b)(6) of the Act,[24] and, in general, to protect investors and the public interest. NASD Regulation believes that the provision of Amendment No. 2 protect investors and the public interest by ensuring that members make a bona fide public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry ''insiders,'' including members and their associated persons, do not take advantage of their ''insider'' position in the industry to purchase new issues for their own benefit at the expense of public customers.

[24] 15 U.S.C. 78o–3(b)(6).

*B. Self-Regulatory Organizations Statement on Burden on Competition*

NASD Regulation does not believe that Amendment No. 2 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Commission received twenty-four comment letter. NASD Regulation responded to those comment letters with Amendment No. 2.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies therof 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–60 and should be submitted by December 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–30976 Filed 12–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3309]**

### State of Oklahoma

As a result of the President's major disaster declaration on November 27, 2000, I find that Caddo and Grady Counties in the State of Oklahoma constitute a disaster area due to damages caused by severe storms and flooding beginning on October 21, 2000 and continuing through October 29, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 26, 2001, and for loans for economic injury until the close of business on August 27, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Blaine, Canadian, Cleveland, Comanche, Custer, Garvin, Kiowa, McClain, Stephens, and Washita in the State of Oklahoma.

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 | 4.000 |

The number assigned to this disaster for physical damage is 330911 and for economic injury the number is 9J7900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–31062 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No.: 09/79–0416]**

### Notice of Surrender of License

Notice is hereby given that Sundance Venture Partners II, L.P., located at 5030 E. Sunrise Drive, Suite 200, Phoenix, Arizona 85044, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Sundance Venture Partners II, L.P., was licensed by the Small Business Administration on 05/04/98. Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was acted on this date, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: November 29, 2000.

**Donald A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–31063 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

| If your Leverageable Capital is: | Then your maximum Leverage is: |
|---|---|
| (1) Not over $18,100,000 | 300 percent of Leverageable Capital |
| (2) Over $18,100,000 but not over $36,300,000 | 54,300,000 + [2 × (Leverageable Capital—$18,100,000)] |
| (3) Over $36,300,000 but not over $54,400,000 | $90,700,000 + (Leverageable Capital—$36,300,000) |
| (4) Over $54,400,000 | $108,800,000 |

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 30, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–31064 Filed 12–5–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 3489]**

### Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the forty-four letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

[25] 17 CFR 200.30–3(a)(12).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 28, 2000.

**William J. Lowell,**

*Director, Office of Defense Trade Controls.*

October 23, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two(2) S–70B–6 helicopters to the Government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 081–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 29, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in South Korea of twenty-five (25) F100–STW–229 Engine Partial Knockdown Kits (PKDs), forty-three (43) Engine Module Sets and related support equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 130–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of proposed Technical Assistance Agreements with Germany and Italy.

The transaction described in the attached certification involves the design and manufacture of a prototype Medium Extended Air Defense System to provide the militaries of the United States, Germany, and Italy with protection from short and medium range ballistic missiles, cruise missiles, and aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 070–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Belgium of F–16 vertical stabilizer assemblies, dorsal fairing panels, dorsal fairing structure assemblies, and aft fuselage assemblies for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 140–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services for the demonstration, manufacturing, and in-service support phases of the Airborne Electronic Reconnaissance System known as Project EXTRACT for end use by the United Kingdom Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 122–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles and services to the Commonwealth of Australia for the development of an Air Combat Training System for the Royal Australian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 123–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data for the manufacture of F–15 parts and components and assemblies, to include the horizontal tail assembly, in Israel.

The United States Government is prepared to license the export of these items having taken into account political, military,

economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 136–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense articles to Greece related to the AN/TPQ–37(V)3 Artillery Weapon Locating Radar system for end use by the Greek Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 116–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the transfer of technical data and assistance for the production, test and repair of inertial measurement units, to include gyros, accelerometers and other subassemblies that will be returned to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 133–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of one shipset of the MK 41 Vertical Launch System for use by the Japanese Maritime Self-Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 137–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in The Netherlands of F–16 center fuselages, wing leading edge flaps, wing trailing edge panels, wing flaperons, and main landing gear doors for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 138–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 27, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Belgium of F–16 flaperon seals, leading edge flap seals, wing assemblies, and vertical fin skins for return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 139–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 28, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of four (4) photographic reconnaissance pods and an image processing ground system to Taiwan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 104–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in South Korea of an additional 350, X1100–5A3 transmissions for the K95 Mobile Howitzer for Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTCk 109–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Israel of F–16 structural components and kits for the air forces of the United States, Belgium, Denmark, Greece, Israel, Korea, The Netherlands, Norway, Portugal, and Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 075–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of a Galaxy III commercial communications satellite to French Guiana for launch of an Ariane or Sea Launch for launch on a Zenit. Upon orbit, the satellite will be operated by PamAmSat of Greenwich, Connecticut.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin, *Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 103–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction contained in the attached certification involves the export of defense services and technical data for the production and overhaul of Crew Escape System Propellant Actuated and Mechanical Devices (PAD) and components in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin, *Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 93–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Canada of technical data and assistance to ensure the proper integration of the Advanced Imaging Multi-Spectral Sensor (AIMS) in U. S. Navy and U. S. Customs P–3 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 102–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data for engineering, intermediate-level maintenance, and logistical training, to support the integration and operation of equipment being installed on remanufactured AH–64A aircraft, in Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 129–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Italy.

The transaction described in the attached certification involves the transfer of technical data, hardware and assistance in the production of PAVEWAY II Laser Guided Bomb Kits for end use by the Italian Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 052–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to support the development of the long range Airborne Stand-Off Radar (ASTOR) surveillance and target acquisition system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 087–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale and support of fourteen (14) LANTIRN targeting pods and related pylons, support equipment and spares to the Royal Danish Air force for use in F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 99–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, and support of the NSS–6 commercial communications satellite for The Netherlands. To be launched from French Guiana, the satellite will provide commercial communication services to Australia, South East Asia, China, North East Asia, India, the Middle East and parts of Africa.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 112–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to support the integration of the AGM–65 Maverick Weapon system with United Kingdom MoD aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 119–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles, and defense services to services to support the production of STANDARD missile control actuation systems for end use in the United Kingdom and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 121–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export to Japan of technical data and assistance in the manufacture of AN/UYQ–21 Computer Display Systems and devices using AN/UYQ–21 electronic cooling equipment technology, Tactical Air Weapons Control Systems (TAWCS), Tank Laser Rangefinders, AN/UYA–4 Data Display System, AN/SPS–52B and 52C Planar Array Radars, and AN/TSQ–51–51–JX Air Defense Fire Distribution Systems for end use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 125–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction contained in the attached certification involves the transfer of technical data and assistance in the development of the Joint Biological Point Detection System (JBPDS) for end use by the Government of the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 120–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to support the Upgrade of thirty-four (34) F/A–18 C/D in Switzerland.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 131–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36 (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the transfer of technical data and assistance for the manufacture, test and repair of the AN/ASQ–81 Magnetic Anomaly Detection (MAD) equipment for end use by the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 134–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to assemble, test, integrate and sell the AN/SQQ–32 Minehunting Sonar System in Spain.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arm control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 042–00

The Honorable J. Dennis Hastert, Speaker of the House of Representative.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c)(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services and technical data to improve the overall manufacture and production process of the L–159 Trainer/Light Combat Fighter Aircraft, and the manufacture of small parts and components for the AV–8B, C–17, F–15, F/A–18 and T–45 aircraft, in the Czech Republic.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 67–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale to the United Kingdom of upgraded avionics equipment for eight CH–47 Mk3 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 097–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the sale of five (5) shipsets of an AEGIS-derived integrated weapon system to Spain for installation on anti-submarine warfare frigates for end use by the Norwegian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 100–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale and support of ten (10) LANTIRN targeting pods and related pylons, support equipment and spares to the Royal Netherlands Air Force for use on F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 101–00

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement with Mexico.

The transaction described in the attached certification involves the transfer of proprietary information, technical expertise and defense services to Mexico to develop the design for, and manufacture of facilities materials, specification items and outfitting materials for U.S. Navy Strategic Sealift T–AKR 310, LMSR, MPF (E) and T–ADC(X) class vessels.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 107–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, assistance and defense articles for the manufacture, assemble and overhaul in South Korea of XTG411–2A transmissions for the Government of South Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 110–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 20, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) & (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with the United Kingdom.

The transaction described in the attached certification involves the manufacture of the Model 2093 minehunting sonar towed body for the navies of Australia, Belgium, Canada, France, Italy, Germany, Japan, Netherlands, Portugal, Saudi Arabia, Spain, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 128–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 19, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and services for the operation and sale of a GE–6 commercial communications satellite to Argentina.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 108–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 18, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing and Technical Assistance Agreement for the export of defense services under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense services for Co-Production of the Mk 45 Model 4, Five Inch, 62 Caliber Naval Gun System, in the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. 016–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.
September 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the sale of the Anik F2 commercial telecommunications satellite to Canada for launch either from French Guiana or from international waters using the Sea Launch program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 094–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to Germany for the Cooperative Rolling Airframe Missile (RAM) MK 31 Guided Missile Weapon System Program for end use by the Governments of Germany and United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 055–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

September 12, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Germany of technical data, defense services and classified hardware kits in support of the radar upgrade for the PATRIOT Air Defense System.

The United States Government is prepared to license the export of these items having taken into account

political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 083–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

September 8, 2000.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services for the production of various products, systems, and subsystems for commercial and military aircraft, in Singapore and Germany.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 89–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

September 25, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed License for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of ship engineering and design services to Spain for the construction of a new class of Corvette for the Turkish Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 105–00

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 00–31074 Filed 12–5–00; 8:45 am]

BILLING CODE 4710–25–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/D–212]**

## WTO Consultations Regarding Countervailing Duty Measures Concerning Certain Products From the European Communities

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on November 13, 2000, the United States received from the European Communities (EC) a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The request relates to the continued application by the United States of countervailing duties based upon the ''change in ownership'' methodology used by the U.S. Department of Commerce (Commerce). The measures identified by the EC (including the relevant Commerce case number) are as follows:

- Original Imposition of Countervailing Duties
- Stainless Steel Sheet and Strip in Coils from France (C–427–815)
- Certain Cut-to-Length Carbon Quality Steel from France (C–427–817)
- Certain Pasta from Italy (C–475–819)
- Stainless Steel Sheet and Strip in Coils from Italy (C–475–825)*
- Certain Stainless Steel Wire Rod form Italy (C–475–821)*
- Stainless Steel Plate in Coils from Italy (C–475–823)*
- Certain Cut-to-Length Carbon-Quality Steel Plate from Italy (C–475–827)

(With respect to those cases marked with an asterisk, the correct case numbers are provided, as opposed to the incorrect case numbers included in the EC's request for consultations.)

- Administrative Reviews
- Cold-Rolled Carbon Steel Flat Products from Sweden (C–401–401)
- Cut-to-Length Carbon Steel Plate from Sweden (C–401–804)
- Grain-Oriented Electrical Steel from Italy (C–475–812)

(With respect to case C–475–812, the EC consultation request identifies the ''Preliminary determination, plus final sunset results''.)

- Sunset Reviews
- Cut-to-Length Carbon Steel Plate from the United Kingdom (C–412–815)
- Certain Corrosion-Resistant Carbon Steel Flat Products from France (C–427–810)
- Cut-to-Length Carbon Steel Plate from Germany (C–428–817)
- Cut-to-Length Carbon Steel Plate from Spain (C–469–804)

The EC alleges that the continued application of Commerce's change in ownership methodology in these countervailing duty proceedings violate Articles 10, 19 and 21 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), because, according to the EC, there is no proper determination of a benefit to the producer of the goods under investigation, as required by Article 1.1(b) of the SCM Agreement. Under Article 4.3 of the WTO Dispute Settlement Understanding (DSU), consultations are to take place within a period of 30 days from the date of receipt of the request, or within a period otherwise mutually agreed between the United States and the EC. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2001, to be assured of timely consideration by USTR.

**ADDRESSES:** Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Change in Ownership Methodology Dispute. Telephone: (202) 395–3582.

**FOR FURTHER INFORMATION CONTACT:** William D. Hunter, Associate General

Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508. Telephone: (202) 395–3582.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

**Major Issues Raised by the EC**

In its consultation request, the EC alleges that in United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products, WT/DS138/AB/R, the WTO Appellate Body found Commerce's change in ownership methodology to be inconsistent with the SCM Agreement. The EC also alleges that the Appellate Body found that a change of ownership at fair market value eliminated the benefit of any prior subsidies to the privatized company. Therefore, the EC alleges that the continued application of Commerce's change in ownership methodology, and the continued imposition of countervailing duties based upon that methodology, violate Articles 10, 19 and 21 of the SCM Agreement. According to the EC, if the United States had properly examined the nature of the change in ownership in each of the countervailing duty proceedings identified in the EC's request for consultations, the amount of countervailing duty would have been greatly reduced or, in some cases, found to be zero.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–212, Change in Ownership Methodology Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 00–31068 Filed 12–5–00; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program; Austin-Bergstrom International Airport, Austin, Texas

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Austin for Austin-Bergstrom International Airport under the provisions of Title 49, U.S.C., Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On April 5, 1999, the FAA determined that the noise exposure maps submitted by the City of Austin for Austin-Bergstrom International Airport under part 150 were in compliance with applicable requirements. Subsequently, the City submitted a revised 2004 noise exposure map, which the FAA approved on May 8, 2000. On November 7, 2000, the Administrator approved the noise compatibility program. The measures requiring Federal approval of the program were approved.

**DATES:** The effective date of the FAA's approval of the noise compatibility program for Austin-Bergstrom International Airport is November 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nan L. Terry, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5607. Documents reflecting this FAA action maybe reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for the City of Austin for Austin-Bergstrom International Airport effective November 7, 2000.

Under Title 49 U.S.C., section 47504 (hereinafter referred to as ''Title 49''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or

disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, §150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and a FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for program grants must be submitted to the FAA Airports Division Office in Forth Worth, Texas.

The City of Austin submitted to the FAA on May 25, 2000, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1998 through May 2000. On April 5, 1999, the FAA determined that the noise exposure maps submitted by the City of Austin for Austin-Bergstrom International Airport under part 150 were in compliance with applicable requirements. Notices of these determinations were published in the **Federal Register** on April 20, 1999, and May 25, 2000, respectively.

The Austin-Bergstrom International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on May 8, 2000, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation on and off the airport that requested FAA approval. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 7, 2000.

Outright approval was granted for the three proposed action elements in the noise compatibility program where the City of Austin requested federal approval. Approved action elements included a ''Fly Quiet Program'' involving a voluntary preferential runway use policy and flight track management procedures, land use mitigation measures involving a land acquisition program and a sound insulation program, and program management measures involving a flight track and noise monitoring system, and provisions for updating the noise exposure map and noise compatibility program. These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 7, 2000. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal are available at the FAA office listed above and at the administrative offices of: City of Austin, Department of Aviation, Austin-Bergstrom International Airport, 3600 Presidential Boulevard, Austin, Texas 78719.

Issued in Fort Worth, Texas, November 20, 2000.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 00–31088 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA, Inc.; Government/Industry Free Flight Steering Committee, Revised Agenda

The December 13 RTCA Free Flight Steering Committee meeting announced in the **Federal Register**, 65 FR 70869 (Tuesday, November 28, 2000), has been revised.

The revised agenda reads as follows: The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Report from FAA: (a) Free Flight Phase 1 Operational Assessment Update; (b) End-to-End Checklist for Safe Flight 21 Applications; (c) FAA Primary En Route Radar Restructuring Program; (4) Report and Recommendations from the Free Flight Select Committee: (d) National Airspace System Concept of Operations; (e) Addendum 4: Free Flight Phase 2; (5) CNS/ATM Focus Team Data Link Report; (6) National Airspace System Operational Evolution Plan; (7) Other Business; (8) Date and Location of Next Meeting; (9) Closing Remarks.

Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on November 30, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–31092 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application to a Passenger Facility Charge (PFC) at Killeen Municipal Airport, Kileen, TX and Use the Revenue at Killeen Municipal Airport and Robert Gray Army Airfield

**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 at Killeen

Municipal Airport and use the revenue from a PFC at Killeen Municipal Airport and Robert Gray Army Airfield under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before January 5, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, PFC Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don O. Christian, Manager of Killeen Municipal Airport at the following address: Mr. Don O. Christian, Director of Aviation, Killeen Municipal Airport, 1525 Airport Drive, Box A, Killeen, TX 76543–5536.

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, PFC Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

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 the revenue from a PFC at Killeen Municipal Airport and use the revenue at Killeen Municipal Airport (ILE) and Robert Gray Army Airfield (GRK) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 22, 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 February 24, 2001.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50

*Proposed charge effective date:* May 1, 2001.

*Proposed charge expiration date:* July 1, 2005.

*Total estimated PFC revenue:* $2,570,000.

*PFC application number:* 01–05–C–00–ILE.

*Brief description of proposed project(s):*

**Projects To Impose and Use PFC's:**

1. Construct Partial Parallel Taxiway to Runway 15–33 (GRK).
2. Terminal Facilities Site Work, Utilities and Access Road (GRK).
3. Construct Terminal Building and Apron (GRK).
4. Acquire Additional Land for Terminal (GRK).
5. Runway Safety Area Improvements (ILE).

*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 Killeen Municipal Airport.

Issued in Forth Worth, Texas on November 22, 2000.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 00–31089 Filed 12–5–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Air Traffic Noise Screen

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of change in air traffic noise screen policy.

**SUMMARY:** This action changes the FAA Air Traffic Noise Screen (ATNS) policy to incorporate an administrative change in the procedures to conduct the ATNS. This action is issued as a Final Notice without prior notice because this change is administrative and/or required by statute. Also, the current adoption of the policy change is in the public interest.

**DATES:** Effective January 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** William J. Marx, Environmental Programs Division, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone: (202) 267–3705.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1987 the Federal Aviation Administration (FAA) implemented the Expanded East Coast Plan (EECP). At that time air traffic proposed actions above 3,000 feet above ground level (AGL) were considered non-controversial by nature and were categorically excluded from further environmental review under the National Environmental Policy Act of 1969. When the EECP was categorically excluded from further environmental review, populations in New Jersey reacted strongly. The action became highly controversial, and Congress mandated that an Environmental Impact Statement (EIS) be completed by the FAA. At that time, there was no precedence for analyzing noise effects from aircraft above 3,000 feet AGL.

In 1991 Air Traffic Services began the Congressionally mandated EIS of air traffic procedural actions associated with the EECP. Populations in the study area were analyzed for noticeable changes (±5 decibels on an average annual basis) in their exposure to aircraft noise due to the EECP.

The FAA chose to model predicted change in noise exposure up to 18,000 feet AGL to insure that communities with predicted 45 decibel (dB) Day Night Level (DNL) (average aircraft noise level over a 24 hour period averaged over the course of a year) noise footprints were included in the study area. The resulting Air Traffic Noise Screen (ATNS) was created to address airspace changes that may cause controversy on environmental grounds at altitudes between 3,000 feet AGL and 18,000 feet AGL. It was a factor to be considered in determining whether actions normally categorically excluded from further environmental review should be reviewed as part of an environmental assessment because of the potential for community annoyance and reaction.

Since the EECP EIS, Air Traffic Services has used 18,000 feet AGL as the altitude ceiling when screening for potentially controversial noise exposures that could be expected from proposed air traffic actions. In 1999 the FAA's Office of Air Traffic Airspace Management initiated a scientific study

of the ATNS to rigorously analyze predicted noise exposures using different altitude ceilings. Using a research and development tool, FAA analyzed data from a major airspace project and proposed alternative that reflected the largest proposed changes to the current area airspace design. The science-based study provided analysis on the difference in noise screening results by comparing results using an 18,000 feet AGL altitude ceiling with results using 10,000, 12,000, 14,000, and 16,000 feet AGL. Completed in July 1999, the results revealed equivalent predicted noise exposure values using a 10,000 feet ceiling as were predicted using a 18,000 feet ceiling. In addition, since the ATNS was implemented, proposals to change air traffic procedures have not identified 5 decibel or greater changes at altitudes above 10,000 feet AGL.

The results of this analysis confirm that an altitude cut-off of 10,000 feet AGL has materially the same predictive capability as the ATNS run to 18,000 feet AGL. The FAA has determined that the public interest is served by this action. The policy change enables the Air Traffic Service to avoid unproductive agency resource use; further, the policy change enables resource allocation to more timely analysis of environmental conditions for proposed airspace projects without changing environmental protection and consideration to affected communities.

**Air Traffic Noise Screen Policy**

Beyond the airport environs, aircraft following air traffic routes and procedures normally do not significantly influence the noise environment of underlying land uses. Air traffic procedures for operations over 3,000 feet AGL are normally categorically excluded from environmental assessment requirements delineated in FAA Order 1050.1, Environmental Impacts: Policies and Procedures.

At the same time, in recognition that some actions that are normally categorically excluded can be highly controversial on environmental grounds, the FAA has developed the ATNS which allows air traffic specialists and planners to evaluate potential noise impacts from proposed air traffic changes. The ATNS is a computerized noise screening procedure that provides guidance to air traffic managers in identifying air traffic changes that will increase aircraft noise exposure, and the possible need for an environmental assessment.

The ATNS will be used to evaluate proposed changes in arrival procedures between 3,000 feet and 7,000 feet and departure procedures between 3,000 and 10,000 feet AGL, for large civil jet aircraft weighing over 75,000 pounds. Where a proposed change would cause an increase in noise of 5 dB DNL or greater, FAA considers whether there are extraordinary circumstances in accordance with Order 1050.1 that warrant preparation of an environmental assessment.

Issued in Washington, DC November 30, 2000.

**Nancy B. Kalinowski,**

*Deputy Program Director for Air Traffic Airspace Management, ATA–1.*

[FR Doc. 00–31090 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Pilot Program To Permit Cost-Sharing of Air Traffic Modernization Projects

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of final program guidance; request for sponsors' expressions of interest for air traffic modernization cost-sharing projects for fiscal years 2001, 2002, and 2003.

**SUMMARY:** On August 14, 2000, the FAA issued proposed program guidance on Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21), which authorizes a pilot program for cost-sharing of air traffic modernization projects. The FAA is now issuing final program guidance and is requesting sponsors' expressions of interest for cost-sharing projects for fiscal years 2001, 2002, and 2003. The comments that the FAA received on the proposed guidelines and FAA's responses can be found below under the heading **SUPPLEMENTARY INFORMATION.** The purpose of Section 304 is to improve aviation safety and enhance mobility by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. Under the pilot program, the Secretary of Transportation may make grants to eligible project sponsors for not more than ten eligible projects, with each project limited to Federal funding of $15,000,000 and a 33 percent Federal cost share. A project sponsor may be a public-use airport (or a group of public-use airports), or a joint venture between a public-use airport (and a group of public-use airports) and one or more U.S. air carriers.

**DATES:** Initial sponsors' expressions of interest should be received by the FAA's Air Traffic System Requirements Service on or before January 19, 2001.

**ADDRESSES:** Sponsors' expressions of interest should be mailed or delivered, in duplicate, to the Federal Aviation Administration, Air Traffic System Requirements Service (ARS–1), Room 8206, 400 7th Street, SW, Washington, DC 20590. Electronic submissions of expressions of interests will not be accepted. Deliveries may be made between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays. An electronic copy of this notice may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

**FOR FURTHER INFORMATION CONTACT:** Ward Keech (202–267–3312) or Charles Monico (202–267–9527), Office of Aviation Policy and Plans (APO), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION**

**1. Background**

In performing its mission of providing a safe and efficient air transportation system, the FAA operates and maintains a complex air traffic control system infrastructure. Section 304 of the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR–21) authorizes a pilot program to permit cost-sharing of air traffic modernization projects, under which airports and airport/airline joint ventures may procure and install facilities and equipment in cooperation with the FAA. The purpose of Section 304 is to improve aviation safety and enhance mobility in the air transportation by encouraging non-Federal investment on a pilot program basis in critical air traffic control facilities and equipment. The pilot program is intended to allow project sponsors to achieve accelerated deployment of eligible facilities or equipment, and to help expand aviation infrastructure.

This notice responds to congressional direction that the FAA issue advisory guidelines on implementation of the pilot program.

**2. Responses to Comments Requested in August 14, 2000 Federal Register Notice**

The August 14, 2000, notice requested comments on FAA's proposed program

guidance. The comments that the FAA received on the proposed guidelines and FAA's responses to those comments are summarized below:

a. A commenter suggested that the guidance should clearly allow and explicitly acknowledge that project facilities, equipment and automation tools may or may not be transferred to the FAA for operation and maintenance. The commenter points out that the proposed guidance did not exclude the possibility that certain pilot projects will not be transferred to the FAA for operation and maintenance. The FAA agrees with this comment. It was not the intent of the stature or the FAA to require project transfer. The FAA has changed the guidance to clarify that the project sponsor may elect to transfer or not transfer the project to the FAA. The FAA has also clarified the requirement that, at the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect. The FAA has also clarified the requirement that, if the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

b. A commenter objected to the proposed criterion that the project be consistent with FAA's air traffic equipment/systems infrastructure and architecture. The FAA does not concur. It is essential that a pilot project be compatible and consistent with FAA's air traffic equipment/systems infrastructure and architecture because FAA is statutorily liable for operating and maintaining the project if the sponsor elects to transfer it to the FAA.

c. A commenter objected to the proposed criterion that the project be a validated project of an FAA program. The FAA does not concur. By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. Given that there are no specifically appropriated funds for the pilot program, FAA has chosen to limit pilot program eligibility to validated projects of FAA programs. To do otherwise could result in Federal funding of pilot program projects at the expense and exclusion of non-pilot program projects which are generally expected to yield greater returns to the safety and efficiency of the air transportation system.

d. A commenter expressed concern about the proposed criterion that project hardware have a useful and expected life of ten years or more. The commenter noted that the requirement is impractical as applied to commercial off-the-shelf computers which cannot be maintained cost-effectively for more than 5 years or so after the purchase date. The FAA acknowledges the merit of this comment. The FAA has changed the criterion to ''the project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.''

**3. Final Program Guidance**

This section restates the statutory language of AIR–21 Section 304 and outlines FAA's supplementary criteria for the pilot program. FAA's evaluation and screening criteria are outlined in Section 3.6 of this notice.

*3.1 Eligible Project Sponsors*

3.1.1 Statutory Provisions for Sponsor Eligibility

The term ''project sponsor'' means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

3.1.2 Supplementary FAA Criteria for Sponsor Eligibility

An eligible project sponsor is a public-use airport (or group of airports), either publicly or privately owned, acting on its own or in a joint venture with one or more U.S. air carriers. All landing facilities meeting these criteria are eligible, including but not limited to commercial service airports, reliever airports, general aviation airports, heliports, etc. All eligible sponsors are encouraged to participate.

*3.2 Eligible Projects*

3.2.1 Statutory Provisions for Project Eligibility

The term 'eligible project' means a critical project relating to the Nation's air traffic control system that is certified or approved by the Administrator and that promotes safety, efficiency, or mobility. Such projects may include:

a. airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landings systems, weather and wind shear detection equipment, lighting improvements, and control towers;

b. automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

c. facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

The statute limits the pilot program to 10 eligible projects.

3.2.2 Supplementary FAA Criteria for Project Eligibility

a. The project should be consistent with FAA's air traffic equipment/systems infrastructure and architecture and should be a validated project of an FAA program. The project should be initiated within two years of project approval and completed/commissioned within five years of project approval (allowing for an environmental impact study (if necessary), acquisition, supply support, training programs, etc.).

b. Equipment and facilities should meet applicable FAA advisory circulars nad specifications. New or modified computer software is eligible if it meets all other criteria.

c. The project should serve the general welfare of the flying public; it should not be used for the exclusive interest of a for-profit entity.

d. Any facility/equipment acquired under the project should be a new asset, not an asset that the sponsor has already acquired or committed to acquiring. Either the FAA or the sponsor may use its acquisition authority and acquisition vehicles to procure and install facilities and equipment under the pilot program. In the case where the FAA manages the procurement, existing FAA contracts will be used where possible. Unless otherwise stipulated in the agreement executed between the sponsor and the FAA, liability for cost over-runs will be shared between the FAA and the sponsor in accordance with their project cost shares (however, the FAA's total cost share is limited by statute to $15,000,000 per project). Equipment in FAA's inventory that has not been previously adopted qualifies as eligible equipment.

e. The project should have a useful and expected life of ten years or more, notwithstanding the possible need to replace project components during its operating life.

f. If a sponsor submits more than one project nomination, each project should form part or all of an integrated system.

g. A project may not be co-mingled with other FAA cost-sharing programs (*e.g.,* the provisions of AIR–21 Section 131 that authorize cost-sharing programs for airport traffic control tower operations and construction).

h. All equipment and structures should meet OSHA standards for employee safety and fire protection. Where land is involved, the property should meet all environmental compliance requirements, including noise, hazardous material, property access, and zoning rights.

i. A project may not create an increase in the controller or airways facility workforces during the pre-transfer period (see section below titled ''Transfer of Facility or Equipment to FAA'').

*3.3 Funding*

3.3.1 Statutory Provisions for Funding

The Federal share of the cost of an eligible project carried out under the pilot program shall not exceed 33 percent. No project may receive more than $15,000,000 in Federal funding under Section 4810(a) of Title 49, United States Code (FAA's Facilities and Equipment appropriation). The Secretary shall use amounts appropriated under Section 48101(a) for fiscal years 2001 through 2003 to carry out the program.

The sponsor's share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to Section 40117 of Title 49, United States Code (passenger facility charges).

3.3.2 Supplementary FAA Criteria for Funding

FAA is not obligated to fund one-third of the total projects costs; rather, FAA's share may not exceed this threshold. The project sponsor must provide two-thirds or more of the total project cost. The Federal and non-Federal shares of project cost may take the form of in-kind contributions. If selected for the pilot program, a sponsor may use passenger facility charge (PFC) revenues to acquire and install eligible facilities and equipment, but not to fund their operation or maintenance. Normal PFC processing procedures under Federal Aviation Regulation 14 CFR Part 158 will be used to approve the imposition of a PFC or the use of PFC revenue as the non-Federal share of a pilot program project.

Project funding may be effected through a grant, a cooperative agreement, or other applicable instrument. Non-Federal matching contributions applied to any other Federal project or grant may not be used to satisfy the sponsor's cost share under this pilot program. FAA may utilize equipment in its inventory that has not been previously deployed.

The following criteria apply to the calculation of the cost-sharing ratio:

a. Project costs are limited to those costs that the FAA would normally incur in conventional facilities and equipment funding (*e.g.,* if land/right-of-way must be acquired or leased for a project, its cost can be included in the cost-sharing ratio only if FAA would otherwise incur it in conventional program funding).

b. Operations and maintenance costs of the project, both before and after any sponsor-elected project transfer to the FAA, will not be considered as part of the cost-share contribution.

c. Non-federal funding may include cash, substantial equipment contributions that are wholly utilized as an integral part of the project, and personnel services dedicated to the proposed project prior to commissioning, as long as such personnel are not otherwise supported with Federal funds. The non-federal cost may include in-kind contributions (*e.g.,* buildings). In-kind contributions will be evaluated as to whether they present a cost that FAA would otherwise incur in conventional facilities and equipment funding.

d. Aside from in-kind contributions, only funds expended by the sponsor after the project approval date will be eligible for inclusion in the cost-sharing ratio.

e. Unless otherwise specified by these criteria, the principles and standards for determining costs should be conducted in accordance with OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments.

f. As with other U.S. DOT cost-sharing grants, it is inappropriate for a management/administrative fee to be included as part of the sponsor's contribution. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to support the project.

By statute, funding to carry out the Federal share of the program may be available from amounts authorized to be appropriated under 49 U.S.C. 48101(a) (FAA's Facilities and Equipment authorization) for fiscal years 2001 through 2003. FAA funding decisions will be made in concert with the project evaluation and project selection processes discussed later in this notice. FAA may choose to use specifically appropriated funds, to re-program funds from within existing facilities and equipment project appropriations, or to fund from within existing budget line items.

The U.S. Department of Transportation and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal and non-Federal contributions for selected projects. Sponsors should maintain sufficient documentation during negotiations and during the life of the project to substantiate costs.

*3.4 Transfer of Facility or Equipment to FAA*

3.4.1 Statutory Provisions for Facility or Equipment Transfer

Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the FAA, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The FAA shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the FAA in accordance with criteria of the FAA.

3.4.2 Supplementary FAA Criteria for Facility or Equipment Transfer

Project transfer to the FAA will be at the sponsor's election. At the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect. If the project is not transferred to the FAA, the sponsor remains liable for all operations and maintenance costs, including the costs of capital sustainment.

In the event of transfer, software code, data rights, and support tools should be provided to the FAA at no cost to the FAA.

*3.5 Application Procedures*

Application to the pilot program consists of two phases, as described below. The purpose of Phase 1 is to allow the FAA to gauge the level of interest, to provide preliminary responses to potential sponsors without causing applicant sponsors to expend excessive resources on project applications that have very limited chances of acceptance because of need or cost, and to plan for subsequent program implementation. In Phase 2, sponsors will provide more detailed applications, and final FAA evaluations/project selections will be completed.

3.5.1 Phase 1: Sponsor's Expression of Interest

A Phase 1 expression of interest should reflect a meaningful proposal and should not be submitted by a potential sponsor as a placeholder. The Phase 1 submission is not binding but it should reflect accurate estimates of project cost and sponsor contributions. Sponsors should submit written

expressions of interest in accordance with the sections captioned **ADDRESSES** and **DATES** earlier in this notice. Electronic submissions will not be accepted. A sponsor's initial expression of interest should include the following:

a. Identity of sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures.

b. Description and location of the proposed project.

c. Statement of need for the project, including a brief assessment of the projected benefits—site-specific, regional, and the national airspace system.

d. Preferred project schedule, including start date, completion date, and any significant interim milestone dates.

e. Statement of intent to transfer the project to the FAA, including envisioned date, or intent not to transfer the project to the FAA.

f. Schedule of estimated project costs, including, (1) Up-front costs divided into proposed shares between the sponsor and the FAA, and (2) annual life-cycle operations and maintenance costs (both before and after transfer if the sponsor elects to transfer the project to the FAA).

g. Self-assessment of the ability to acquire and commit the non-Federal share of funding.

The FAA will review and evaluate the expressions of interest submitted during Phase 1, using a panel of technical program experts. The FAA will contact the sponsor if it has questions or has suggestions on how the sponsor may improve its proposal. Following its evaluations and preliminary selections, the review panel will recommend to the Director of FAA's Airway Facilities Service and the Director of FAA's Office of System Architecture and Investment Analysis those applicant sponsors who should be invited to participate in Phase 2, as described below. These officials will notify and invite selected sponsors to participate in Phase 2.

3.5.2 Phase 2: Formal Application and Selection of Projects

During Phase 2 each sponsor that has been invited to participate should submit an expanded application with the following elements: Project Description, Economic Analysis, Schedule, Financial Plan, Letter of Commitment, and a Letter of Acknowledgment/Support from the applicable State Department of Transportation and/or other appropriate jurisdiction. The following subsections describe the information needed by the FAA to evaluate the merits of each application.

a. Project Description: The project description should contain: (1) The identity of the submitting sponsor (including point-of-contact's name, mailing address, telephone number, fax number, and e-mail address) and all participating authorities or entities in the case of joint ventures; (2) project name and location; and (3) a detailed project description.

b. Economic Analysis: All applications should describe the need for the project and demonstrate its safety, efficiency, capacity, productivity, and other benefits, as applicable, at the airport, regional, and system-wide levels. The sponsor may conduct its own analysis, may opt to summarize existing analyses from FAA's acquisition management system, and/or may use the investment criteria in FAA Order 7031.2C, Airway Planning Standard Number One. The analysis should include a schedule of project costs, including: (1) Up-front costs broken down into proposed shares between the sponsor and the FAA; and (2) annual and life-cycle operations and maintenance costs before and after transfer to the FAA (if the sponsor elects to transfer). The level of effort devoted to the analyses should be tailored to the scope and cost of the project. The economic analyses should be consistent with FAA guidance contained in Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide, and Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs.

c. Schedule: the Schedule should list all significant proposed project dates, including the start date, completion date, date of project transfer to the FAA (if applicable), and key interim milestone dates. Sponsors are reminded that, at the time of transfer, the project should be operable and maintainable by the FAA and should comply with FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities, or any successor Order then in effect.

d. Financial Plan: The Financial Plan should contain: (1) The proposed local and Federal cost shares, (2) evidence of the sponsor's ability to provide funds for its cost share (*e.g.,* approved local appropriation or Memorandum of Agreement); and (3) any commitment the sponsor might choose to offer for the assumption and liability of cost overruns aside from the liability criterion provided earlier in this notice.

e. Letter of Commitment: Sponsors should demonstrate a commitment to the project, as evidenced by a Letter of Commitment signed by all project participants (including any participating air carriers). The letter should, at a minimum, include a list of the participating agencies and organizations in the proposed project; the roles, responsibilities and relationship of each participant; and the name, address, and telephone number of the individual representing the sponsor.

f. Letter of Acknowledgement/Support: The application should include a letter of acknowledgment/support from the applicable State Department of Transportation and/or other appropriate jurisdiction (to avoid circumventing State and metropolitan planning processes).

The FAA will review and evaluate the Phase 2 applications using a panel of technical program experts, based on the criteria outlined below in Section 3.6. Following its evaluations, the review panel will prioritize and recommend to the FAA's Associate Administrator for Air Traffic Services and the Associate Administrator for Research and Acquisition those applications that it believes should be accepted. If the FAA selects a project for inclusion in the pilot program, an agreement will be executed between the sponsor and the FAA.

3.5.3 Subsequent Application and Selection Cycles (if any)

If fewer than the statutorily-limited ten projects have been approved following the initial round of Phase 1 and 2 applications, FAA will repeat the Phase 1 and 2 application processes on an annual basis, until the earlier of: May 15, 2003, or that point in time when the ten project limit is reached (see Schedule Summary in Section 3.7 below). The May 15, 2003, cutoff date is based on an allowance of time for FAA to process Phase 2 applications and make selections prior to the statutory authorization expiring at the end of fiscal year 2003. FAA cannot and does not extend any assurance or implication that any residual authority will remain following the first round of Phase 1 and 2 applications.

*3.6 Application Evaluation and Screening Criteria*

The FAA will consider the following elements in evaluating applications:

a. Compliance with statutory criteria, FAA's supplemental criteria, and application procedures

b. Degree to which the project relates to FAA's strategic goals for safety,

efficiency and mobility, as well as the national airspace system architecture

c. Impact on the airport, region, and national airspace system

d. Likelihood of project success

e. Availability of FAA resources

f. Ease of administration (acquisition, installation, etc.)

g. Ability of sponsor to provide its cost share

h. Evidence that the project can be implemented in a timely manner

i. Equity and diversity with respect to project type, geography, and population served

j. Degree of Federal leveraging (degree to which the proposal minimizes the ratio of Federal costs to total project costs)

k. Cost to the FAA: (1) up-front cost-share; and, if applicable, (2) post-transfer life-cycle operating and maintenance costs

*3.7 Schedule Summary*

| Milestone | Date |
|---|---|
| First-Round of Applications: | |
| Phase 1 Applications due to FAA | 1/19/2001 |
| FAA Responses to Sponsors' Phase 1 Applications | 3/16/2001 |
| Phase 2 Applications due to FAA | 6/1/2001 |
| FAA Announcement of First-Round Approvals | 7/13/2001 |
| Second-Round of Applications (if needed): | |
| Phase 1 Applications due to FAA | 12/14/2001 |
| FAA Responses to Sponsors' Phase 1 Applications | 2/15/2002 |
| Phase 2 Applications due to FAA | 5/15/2002 |
| FAA Announcement of Second-Round Approvals | 7/15/2002 |
| Third-Round of Applications (if needed): | |
| Phase 1 Applications due to FAA | 12/13/2002 |
| FAA Responses to Sponsors' Phase 1 Applications | 2/14/2003 |
| Phase 2 Applications due to FAA | 5/15/2003 |
| FAA Announcement of Third-Round Approvals | 7/15/2003 |

*3.8 Project Implementation Information*

During the life of the project, the FAA may collect data from the sponsor and conduct (with non-project funds) independent evaluations of the project's impact on safety, efficiency, and mobility objectives. This will allow the FAA to ascertain the success of the pilot program. The life of the program is currently limited by AIR–21 to the end of fiscal year 2003.

**4. Impact of Final Guidelines**

Potential costs and benefits of the final guidelines have been reviewed consistent with the intent of Executive Order 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act of 1980, Executive Order 13132 (Federalism), Office of the Secretary of Transportation direction on evaluation of international trade impacts, and the Unfunded Mandates Reform Act of 1995.

With respect to the focus of Executive Order 12866, there are no significant costs imposed by the guidelines. The benefit of the guidelines is efficient communication between the FAA and potential project sponsors about the basis and timing which the FAA will employ in selecting pilot program projects and the type of information needed by the FAA to evaluate proposed projects. Potential pilot program project sponsors will only apply for consideration if they believe that they will benefit from consideration. To minimize the costs of application, the guidelines encourage sponsors to provide information wherever possible from existing studies, plans, and other documents. Further, the guidelines request that initial project proposals provide limited detail about the project. Potential sponsors will be asked for additional information only if the FAA believes that the proposal meets the objective of the pilot program based on the limited initial information submission. Facilities and equipment currently incorporated in the federal airport and airway system architecture and approved for acquisition will be implemented, regardless of whether they are selected as a pilot project. Further, in implementing the pilot program, the FAA will not alter the sequence of implementation of system architecture in a manner that would delay achieving overall safety or efficiency benefits. Therefore, the FAA believes that the benefits of the final guidelines exceed their costs.

Airports that are considered small entities may apply to sponsor or participate in pilot projects. Small airports are defined by the Small Business Administration as airports owned by local governments for areas with populations of 200,000 or less. Program participation is voluntary and, as explained above, the cost of application is not considered significant. Because, by statute, the majority of project funding must be provided by the sponsor, few small airports or airlines are likely to elect to participate in the pilot program. Therefore, the FAA certifies that the final guidelines will not have a significant economic impact on a substantial number of small entities.

The FAA has analyzed the final guidelines under the principles and criteria of Executive Order 13132, Federalism. With few exceptions, States do not directly own or operate airports, but public airports are frequently owned and operated by either regional transportation authorities or local governments. The pilot program authorized by Congress which is the subject of these guidelines does not require participation by States, regional transportation authorities, or local governments, but rather permits the formation of a voluntary partnership between the FAA, airports, and airlines on projects considered to be of mutual benefit. These projects will ultimately be paid for by air passengers and shippers, either through fares or freight tariffs, airport charges, or aviation user taxes. FAA facilities and equipment are currently financed by passenger and shippers through aviation user taxes. Program guidelines described in this notice are intended to facilitate communication necessary to implement the pilot projects. By entering into these cooperative relationships, the FAA will not abrogate its responsibilities for the provision and maintenance of air traffic control and airway facilities and equipment, but rather may expedite the implementation of such facilities and equipment. In the absence of the pilot program, the facilities and equipment would ultimately be provided by the federal government and paid for by airline passengers and shippers. Once completed, the projects will be operated and maintained as a part of the federal airway system, if the sponsor elects to transfer the project to the FAA. The FAA has determined that this action does 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, the FAA has determined that these guidelines do not have federalism implications.

The final guidelines will not impose a competitive advantage or disadvantage on either U.S. air carriers operating abroad or on foreign carriers operating to and from the United States. Further, these guidelines, *per se*, will have no effect on the sale of foreign aviation products or services in the United States, nor will they have any effect on the sales of U.S. aviation products in foreign countries. To the extent that

pilot program projects improve aviation safety and airport and airway system efficiency, both domestic and foreign commerce will generally be enhanced.

The final guidelines do not create a federal mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**5. References**

The following list outlines references cited above:

OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments, revised August 29, 1997.

Report FAA–APO–98–4, Economic Analysis of Investment and Regulatory Programs—Revised Guide. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http://api.hq.faa.gov/apo_pubs.htm.*

Report FAA–APO–98–8, Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308. It may also be found on the Internet at: *http//api.hq.faa.gov/apo_pubs.htm.*

FAA Order 7031.2C, Airway Planning Standard Number One, through Change 12. Available upon request from the FAA's Office of Aviation Policy and Plans, telephone 202–267–3308.

FAA Order 6700.20, Non-Federal Navigational Aids and Air Traffic Control Facilities. Available upon request from the FAA's NAS Operations Program Office, telephone 202–267–3034.

Issued in Washington, DC on November 30, 2000.

**Nan Shellabarger,**

*Deputy Director, Office of Aviation Policy and Plans.*

[FR Doc. 00–31091 Filed 12–5–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33955]**

### Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—CSX Transportation, Inc.

Ohio Southern Railroad, Incorporated (OSRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by purchase from CSX Transportation, Inc. (CSXT) and operate approximately 1.5-route miles of rail line, including connecting track, located between milepost 16.7 and milepost 18.2, in Zanesville, Muskingum County, OH (Subject Line). In addition, OSRR will acquire incidental overhead trackage rights over approximately 2.4 miles of CSXT's main line track and access over the transfer tracks in the Zanesville area.[1]

The transaction was scheduled to be consummated on November 22, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33955, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: November 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–30656 Filed 12–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related proceeding, OSRR has agreed to grant certain overhead trackage rights over the Subject Line to CSXT to enable CSXT to continue providing service to its existing customers. *See* STB Finance Docket No. 33962, *CSX Transportation, Inc.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated.*

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 27, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 5, 2001, to be assured of consideration.

**Bureau of the Public Debt (PD)**

*OMB Number:* 1535–0089.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Implementing Regulations: Government Securities Act of 1986, as Amended.

*Description:* The regulations require government securities broker/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors. The regulations also require depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and financial responsibility.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 16,931.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 21 hours, 50 minutes.

*Frequency of Response:* On occasion, Monthly, Quarterly, Annually, Other.

*Estimated Total Reporting/Recordkeeping Burden Hours:* 369,620 hours.

*OMB Number:* 1535–0104.

*Form Number:* PD F 2066.

*Type of Review:* Extension.

*Title:* Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended.

*Description:* PD F 2066 is used as an application by survivors for payment of a bond or check issued under the Armed Forces Leave Act of 1946 to veterans of WW II.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 200 hours.

*OMB Number:* 1535–0105.

*Form Number:* PD F 2481.

*Type of Review:* Extension.

*Title:* Application for Recognition as Natural Guardian of Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.

*Description:* The form is used by the natural guardian of a minor not under legal guardianship to request disposition of securities erroneously registered in the name of the minor.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 25.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 13 hours.

*OMB Number:* 1535–0108.

*Form Number:* PD F 2471.

*Type of Review:* Extension.

*Title:* Certificate to Support Application for Relief on Account of Lost, Stolen or Destroyed United States Securities.

*Description:* The form is executed by individuals to support an application for relief on account of lost, stolen or destroyed United States Securities.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 400.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 200 hours.

*Clearance Officer:* Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 00–30967 Filed 12–5–00; 8:45 am]

**BILLING CODE 4810–40–U**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 29, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 5, 2001 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

*OMB Number:* 1545–0002.

*Form Number:* IRS FORM CT–2.

*Type of Review:* Extension.

*Title:* Employee Representative's quarterly Railroad Tax Return.

*Description:* Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 28.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—13 min.
Learning about the law or the form—13 min.
Preparing the form—24 min.
Copying, assembling, and sending the form to the IRS—16 min.

*Frequency of Response:* Quarterly.

*Estimated Total Reporting/Recordkeeping Burden:* 127 hours.

*OMB Number:* 1545–0029.

*Form Number:* IRS Forms 941, 941–PR, and 941–SS; Schedule B (Form 941), Schedule B (Form 941–PR).

*Type of Revenue:* Extension.

*Title:* Employer's Quarterly Federal Tax Return; American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands (941, 941–PR and 941–SS); and Employer's Record of Federal Tax Liability (Schedule B (941 and 941–PR)).

*Description:* Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. The 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 5,798,054.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Form/Schedule | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling and sending the form to the IRS |
|---|---|---|---|---|
| 941 | 9 hr., 19 min | 40 min | 1 hr., 46 min | 16 min. |
| 941/V | 14 min | 00 min | 00 min | 00 min. |
| 941/V (Over the Counter | 12 min | 00 min | 01 min | 00 min. |
| 941/Line 17 | 57 min | 00 min | 01 min | 00 min. |
| 941 (Schedule B) | 2 hr., 37 min | 06 min | 09 min | 00 min. |
| 941–PR | 6 hr., 42 min | 18 min | 25 min | 00 min. |
| 941–PR/Line 17 | 57 min | 00 min | 01 min | 00 min. |
| 941–PR (Schedule B) | 37 min | 06 min | 09 min | 00 min. |
| 941–SS | 6 hr., 56 min | 18 min | 25 min | 00 min. |
| 941–SS/Line 17 | 57 min | 00 min | 01 min | 00 min. |

*Frequency of Response:* Quarterly.

*Estimated Total Reporting/Recordkeeping Burden:* 315,935,261 hours.

*OMB Number:* 1545–0138.

*Form Number:* IRS Form 2063.

*Type of Review:* Extension.

*Title:* U.S. Departing Alien Income Tax Statement.

*Description:* Form 2063 is used by departing resident aliens against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax liability. the data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 20,540.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | minutes |
|---|---|
| Recordkeeping | 7 |
| Learning about the law or the form | 3 |
| Preparing the form | 26 |
| Copying, assembling, and sending the form to the IRS | 14 |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 17,048 hours.

*OMB Number:* 1545–0240.

*Form Number:* IRS form 6118.

*Type of Review:* Extension.

*Title:* Claim for Refund of Income Tax Return Preparer Penalties.

*Description:* Form 6118 is used by preparers to file for a refund of penalties incorrectly charged. The information enables the IRS to process the claim and have the refund issued to the tax return preparer.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 10,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 13 min. |
| Learning about the law or the form. | 16 min. |
| Preparing the form | 10 min. |
| Copying, assembling, and sending the form to the IRS. | 20 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 10,400 hours.

*OMB Number:* 1545–0390.

*Form Number:* IRS Form 5306.

*Type of Review:* Extension.

*Title:* Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

*Description:* This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by persons who want to establish approved prototype individual retirements accounts or annuities. The data collected is used to determine if plans may be approved.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 600.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 11 hr., 43 min. |
| Learning about the law or the form. | 35 min. |
| Preparing and sending the form to the IRS. | 49 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 7,878 hours.

*OMB Number:* 1545–0790.

*Form Number:* IRS Form 8082.

*Type of Review:* Extension.

*Title:* Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

*Description:* Internal Revenue Code (IRC) sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnership's treatment (6222) and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also, sections 6241 and 6034–A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trusts.

*Respondents:* Business or other for-profit, Individuals or households, Farms.

*Estimated Number of Respondents/Recordkeepers:* 10,600.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 4 hr., 18 min. |
| Learning about the law or the form. | 1 hr., 23 min. |
| Preparing and sending the form to the IRS. | 1 hr., 31 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 76,532 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–30968 Filed 12–05–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 29, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 5, 2001 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

*OMB Number:* 1545–0951.

*Form Number:* IRS Forms 5434 and 5434–A.

*Type of Review:* Extension.

*Title:* Application for Enrollment (Form 5434); and Application for Renewal of Enrollment (Form 5434–A).

*Description:* The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 6,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 38 minutes.

*Frequency of Response:* Other (once every 3 years).

*Estimated Total Reporting/Recordkeeping Burden:* 3,800 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–30969 Filed 12–5–00; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 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.

## The President

### 3 CFR

### Proclamation 7382 of November 30, 2000

*Correction*

In Presidential document 00–31011 beginning on page 75851 in the issue of Monday, December 4, 2000, make the following correction:

On page 75852, the FR document line is corrected to read ''[FR Doc. 00–31011 Filed 12–1–00 11:09 am]''.

[FR Doc. C0–31011 Filed 12–5–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 6, 2000

# Part II

# Environmental Protection Agency

## 40 CFR Part 60

## New Source Performance Standards for New Small Municipal Waste Combustion Units; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD–FRL–6899–6]**

**RIN 2060–AI51**

## New Source Performance Standards for New Small Municipal Waste Combustion Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action reestablishes new source performance standards (NSPS) for new small municipal waste combustion (MWC) units. The NSPS for small MWC units contain stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Some of those pollutants can cause toxic effects such as eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage. The NSPS for small MWC units were originally promulgated in December 1995, but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish NSPS for small MWC units. The NSPS contained in this final rule are equivalent to the 1995 NSPS for small MWC units.

**DATES:** *Effective date.* June 6, 2001.

The incorporation by reference of certain publications listed in this rule are approved by the Director of the Office of Federal Register as of June 6, 2001.

*Applicability Date.* The NSPS apply to small MWC units that commenced construction after August 30, 1999 and small MWC units that commenced reconstruction or modification after June 6, 2001.

**ADDRESSES:** Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for the NSPS. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code-6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Copland at (919) 541–5265, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: copland.rick@epa.gov.

**SUPPLEMENTARY INFORMATION:** Public Comments. The NSPS and companion emission guidelines for small MWC units were proposed on August 30, 1999 (64 FR 47276), and 48 comment letters were received on the proposals. Verbal comments were also received at the October 5, 1999 public hearing. The comment letters and a transcript of the public hearing are available in Docket No. A–98–18. A summary of and responses to the public comments are contained in ''Small Municipal Waste Combustors: Background Information Document for New Source Performance Standards and Emission Guidelines-Public Comments and Responses (EPA–453/R–00-001).'' In response to the public comments, EPA adjusted the final NSPS where appropriate. A copy of the background information document is located in Docket No. A–98–18.

### World Wide Web

Electronic versions of this action, the regulatory text, and other background information, including the response to comments document, are available at the Technology Transfer Network Web site (TTN Web) that EPA has established for the NSPS for small MWC units: ''http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html.'' For assistance in downloading files, call the EPA's TTN Web Help Line at (919) 541–5384.

### Regulated Entities

The NSPS will affect the following categories of sources:

| Category | NAICS codes | SIC codes | Examples of regulated entities |
|---|---|---|---|
| Industry, Federal government, and State/local/tribal governments. | 562213<br>92411 | 4953<br>9511 | Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste. |

The above list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to regulate with the NSPS for small MWC units. Not all facilities classified under the NAICS and SIC codes are affected. Other types of entities not listed could also be affected. To determine whether your facility is regulated by the NSPS, carefully examine the applicability criteria in §§ 60.1010 through 60.1045 of the NSPS.

### Judicial Review

Today's action of adopting a final rule for small MWC units constitutes final administrative action on the proposed NSPS for small MWC units. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 5, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce the requirements.

### Organization of This Document

The following outline is provided to aid in locating information in this preamble.

I. Background Information
II. Summary of the NSPS
A. Sources Regulated by the NSPS
B. Pollutants Regulated by the NSPS
C. Format of the Emission Limits
D. Summary of the NSPS
III. Changes to the NSPS
IV. Impacts of the NSPS
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Rule for Existing Small MWC Units
VI. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 13132: Federalism

C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
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

Abbreviations and Acronyms Used in This Document

ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
CFR Code of Federal Regulations
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FR **Federal Register**
ICR Information Collection Request kg/year Kilograms per year
Mg/year Megagrams per year
MACT Maximum achievable control technology
MSW Municipal solid waste
MWC Municipal waste combustion
NAICS North American Industrial Classification System
NSPS New source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OP Office of Policy
Pub. L. Public Law
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SD/FF/CI Spray dryer/fabric filter/carbon injection
SIC Standard Industrial Classification
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code

## I. Background Information

On December 19, 1995, EPA promulgated NSPS for large and small MWC units under 40 CFR part 60, subpart Eb. The NSPS covered new MWC units located at plants with an aggregate plant combustion capacity greater than 35 megagrams per day of municipal solid waste (MSW) (approximately 39 tons per day of MSW). The 1995 NSPS divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants. Plant size was based on the total aggregate capacity of all individual MWC units at the MWC plant.

Litigation followed the promulgation of the 1995 NSPS. In 1997, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA must develop regulations for small MWC units (units with an individual MWC capacity of 250 tons per day or less) separately from regulations for large MWC units (units with an individual MWC unit capacity greater than 250 tons per day), indicating that the 1995 NSPS were not consistent with section 129 of the CAA. The court directed EPA to revise the 1995 NSPS so that they applied only to large MWC units, and the court vacated the 1995 NSPS as they applied to small MWC units. In response to the court ruling, EPA amended the 1995 NSPS on August 25, 1997 so that they applied only to new large MWC units. Then, on August 30, 1999, EPA proposed NSPS for small MWC units with an individual unit capacity of 35 to 250 tons per day.

Today's final rule reestablishes NSPS for new small MWC units with capacities of 35 to 250 tons per day of MSW under 40 CFR part 60, subpart AAAA.

## II. Summary of the NSPS

The following summarizes the final NSPS for small MWC units, including identification of the subcategories used in the final NSPS. Overall, there are no significant changes in the final NSPS compared to the proposed NSPS. The following two subcategories are used in the NSPS for small MWC units: Class I units are small MWC units located at plants with aggregate plant capacities greater than 250 tons of MSW per day while Class II units are small MWC units located at plants with aggregate plant capacities less than or equal to 250 tons of MSW per day.

### *A. Sources Regulated by the NSPS*

Today's NSPS apply to each new MWC unit that has a design combustion capacity of 35 to 250 tons per day of MSW and commenced construction after August 30, 1999 or commenced modification or reconstruction after June 6, 2001. The NSPS for new, modified, or reconstructed MWC units will become effective on June 6, 2001. Small MWC units that commenced construction on or before August 30, 1999 are not covered under the NSPS (subpart AAAA). Those units will be subject to the emission guidelines for existing small MWC units (subpart BBBB) which are published separately in today's **Federal Register**.

### *B. Pollutants Regulated by the NSPS*

Section 129 of the CAA requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *

Therefore, in addition to the emission limits, EPA is establishing requirements for MWC unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also establishing requirements for the control of fugitive ash emissions. All of those requirements were contained in the 1995 NSPS.

### *C. Format of the Emission Limits*

The format of the emission limits is identical to the format of the 1995 NSPS: emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are the same as the 1995 NSPS. In addition to controlling stack emissions, the NSPS incorporate good combustion practice requirements (*i.e.,* operator training, operator certification, and MWC unit operating requirements).

### *D. Summary of the NSPS*

A concise summary of the NSPS can be found in Tables 1 and 2 of subpart AAAA.

## III. Changes to the NSPS

There are no substantial changes in the final NSPS relative to the NSPS proposed in 1999. A summary of and responses to the public comments are contained in the background information document described earlier under ''Public Comments.'' The final emission limits are consistent with the 1995 NSPS. Based on an evaluation of the best controlled units within the small MWC unit population, EPA has concluded that the performance of a spray dryer/fabric filter air pollution control system continues to represent the maximum achievable control technology (MACT) floor for new small MWC units.

## IV. Impacts of the NSPS

The following describes the impacts (*i.e.,* air, water, solid waste, energy, cost, and economic impacts) of the NSPS for new small MWC units. The impact analysis conducted to evaluate the 1995 NSPS still applies because the air pollution control requirements in the

final NSPS are the same as the 1995 NSPS. The 1995 analysis is available at 59 FR 48198. The discussion in this preamble focuses only on the air, cost, and economic impacts of the NSPS.

In the preamble for the 1995 NSPS, EPA determined that the water, solid waste, and energy impacts associated with the NSPS were not significant. Because the NSPS are the same as the 1995 NSPS, the water, solid waste, and energy impacts are the same and continue to be judged as not significant.

For further information on the impacts of the NSPS, refer to ''Economic Impact Analysis (EIA): Small Municipal Waste Combustion Units—Emission Guidelines and New Source Performance Standards,'' March 2000, EPA–452/R–00–001.

*A. Air Impacts*

As discussed in the EIA, approximately 90 small MWC units located at 41 plants are operating in the United States. Based on trends in small MWC unit construction over the past several years, EPA projects that about one new small MWC plant will be constructed each year. It is estimated that most new plants with small MWC units will have, on average, two small MWC units onsite. The 5th year impacts are, therefore, based on the construction of 10 new small MWC units over a 5-year period.

Table 1 of this preamble presents the national air emissions reductions for new small MWC units that would result from full implementation of the NSPS in the 5th year compared to a baseline scenario without the NSPS.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THE NSPS FOR SMALL MWC UNITS

| Pollutant | Air emissions reduction | Percent reduction [a] |
|---|---|---|
| Dioxins/Furans [b] | 0.2 kg/year | 99 |
| Cadmium | 169 kg/year | 99 |
| Lead | 15 Mg/year | 99 |
| Mercury | 386 kg/year | 97 |
| Particulate Matter | 238 Mg/year | 98 |
| Sulfur Dioxide | 189 Mg/year | 83 |
| Hydrogen Chloride | 137 Mg/year | 90 |
| Nitrogen Oxides | ([c]) | ([c]) |

[a] Percent national emissions reduction relative to national baseline emissions that would occur in the absence of the NSPS.
[b] Total mass of tetra-through octachlorinated dibenzo-p-dioxins through dibenzofurans.
[c] For Class I units, nitrogen oxides emissions reductions are expected to be approximately 40 percent. Class II units are not expected to have any reductions in nitrogen oxides emissions. Since the future distribution of new Class I and II units is unknown, mass reductions of nitrogen oxides are not presented.

*B. Cost and Economic Impacts*

To estimate the costs of the NSPS for new small MWC units, EPA has taken into account the various air pollution control equipment that would need to be installed at new small MWC plants to achieve the NSPS. The cost estimates presented here are the projected costs that a new MWC plant with two small MWC units would incur to comply with the NSPS. Those costs are based on new small MWC units installing spray dryer/fabric filter/carbon injection as the air pollution control device system. The EPA projects that the total annual cost (including annualized capital and operating costs) for a single MWC plant would be approximately $1.6 million, and the total annualized cost of the NSPS would be $8.1 million in the 5th year after promulgation. For more details on the cost and economic analysis, refer to the EIA.

## V. Companion Rule for Existing Small MWC Units

A companion rule to establish emission guidelines for existing small MWC units is being published separately in today's **Federal Register**. The emission guidelines for existing small MWC units are contained in 40 CFR part 60, subpart BBBB.

## VI. Administrative Requirements

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant,'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, 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, EPA has determined that this final rule is not a ''significant regulatory action'' and, therefore, is not subject to OMB review. The EPA submitted the 1995 rulemaking package (which included requirements for new and existing large MWC units and requirements for new and existing small MWC units) to OMB for review (60 FR 65405, December 19, 1995) and OMB approved the rulemaking package for adoption. The NSPS promulgated today only apply to new small MWC units and are projected to have an impact of approximately $8.1 million annually in the 5th year after promulgation of the NSPS.

*B. Executive Order 13132: Federalism*

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'' are 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 proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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 the NSPS do not preclude States from adopting and implementing their own performance standards. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. A list of those consultations is provided in the preamble to the 1995 NSPS (60 FR 65405–65412, December 19, 1995).

*C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

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

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

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 Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further, it is based on technology performance and not on health and safety risks.

*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, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the NSPS do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The EIA shows that the total annual costs of the NSPS is about $8.1 million per year in the 5th year after the rule is promulgated. Thus, today's NSPS are not subject to the requirements of sections 202 and 205 of the UMRA. Although the NSPS are not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of the UMRA for the 1995 NSPS. For a discussion of how EPA complied with the UMRA for the 1995 NSPS, including its extensive consultations with State and local governments, see the preamble to the 1995 NSPS. Because today's final NSPS are equivalent to the 1995 NSPS, no additional consultations were necessary.

*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 Federal agencies to prepare a regulatory flexibility analysis of any 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 today's final rule on small entities, a

small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that few small entities use MWC units for municipal solid waste disposal. The vast majority of small entities use municipal solid waste landfills for disposal. A small entity considering a new small MWC unit would have the opportunity to switch to an alternative municipal solid waste disposal method, such as municipal solid waste landfills, if the costs to comply with the NSPS were considered prohibitive. Thus, the number of small entities that will be significantly impacted by this final rule is not substantial.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this final rule on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for Class II MWC units. In addition, EPA involved representatives of small entities in the development of the NSPS.

*G. Paperwork Reduction Act*

The OMB has approved the information collection requirements in the NSPS under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0423; and ICR #1900.01.

The information will be used by EPA to identify new, modified, or reconstructed units subject to the NSPS and to ensure that those units undergo a preconstruction impact analysis. The information will also be used by EPA to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports enable EPA to identify small MWC units that might not be in compliance with the NSPS. Based on reported information, EPA will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate to EPA whether personnel are operating and maintaining control equipment properly.

The recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

For the information collection request (ICR), a 3-year impact period was analyzed. The NSPS are projected to affect six MWC units located at three MWC plants during the first 3 years immediately following promulgation. The estimated average annual burden to owners of new small MWC units for the first 3 years after promulgation of the NSPS would be approximately 8,600 person-hours annually at a total cost of $219,000 for capital start-up costs and O&M costs per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annualized burden to the government implementing the final NSPS would be approximately 500 hours during the first 3 years at a cost of $21,000 (including travel expenses).

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information collection requirements contained in this final rule.

*H. National Technology Transfer and Advancement Act*

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

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards applicable to the NSPS for small MWC units that could be used in process and emissions monitoring. The search for emissions monitoring procedures identified 29 voluntary consensus standards that initially appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, EPA determined that 21 of the candidate consensus standards identified for measuring emissions or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The seven remaining candidate consensus standards are under development or currently under EPA review. The EPA plans to follow, review and consider adopting those standards after their development and further review by EPA is completed.

One consensus standard, American Society for Testing and Materials (ASTM) D6216–98, is practical for EPA use in EPA Performance Specification 1 (PS–1) (40 CFR part 60, appendix B). The ASTM D6216 can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824). Comments from the proposal have been addressed, and EPA expects to complete that action in the near future. For the above reasons, EPA does not in this final rulemaking adopt ASTM D6216–98 in lieu of PS–1 requirements as it would

be impractical for EPA to act independently from another rulemaking activity already undergoing promulgation, and because ASTM D6216 does not address all of the requirements specified in PS–1.

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for MWC unit load level (steam output); designing, constructing, installing, calibrating, and using nozzles and orifices; and MWC plant operator certification requirements.

One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for potential use in this final rule for the measurement of MWC unit load level (steam output). The EPA believes the standard is practical to use in this final rule as the method to measure MWC unit load. The EPA has already incorporated by reference ''ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)'' in 40 CFR 60.17(h)(2).

A second consensus standard by ASME was identified for potential use in this final rule for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes the standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)'' in 40 CFR 60.17(h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for potential use in this final rule for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes the standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME. The EPA has already incorporated by reference (QRO–1–1994) in 40 CFR 60.17(h)(1).

Tables 3, 4 and 5 of subpart AAAA list the EPA testing methods and performance standards included in this final rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of subpart A of part 60, the standard also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in the rule.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final 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 final rule will be effective June 6, 2001.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Municipal waste combustion, Reporting and recordkeeping requirements.

Dated: November 3, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7601.

## Subpart A—[Amended]

2. Section 60.17 is amended by revising paragraphs (h)(1), (h)(2) and (h)(3) to read as follows:

### § 60.17 Incorporations by reference.

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a), 60.54b(b), 60.1185(a), 60.1185(c)(2), 60.1675(a), and 60.1675(c)(2).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 60.1320(a)(3) and 60.1810(a)(3).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), 60.1320(a)4), and 60.1810(a)(4).

* * * * *

3. Part 60 is amended by adding a new subpart AAAA to read as follows:

## Subpart AAAA—Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001

Sec.

**Introduction**

60.1000 What does this subpart do?
60.1005 When does this subpart become effective?

**Applicability**

60.1010 Does this subpart apply to my municipal waste combustion unit?
60.1015 What is a new municipal waste combustion unit?
60.1020 Does this subpart allow any exemptions?
60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?
60.1030 Can the Administrator delegate authority to enforce these Federal new source performance standards to a State agency?
60.1035 How are these new source performance standards structured?
60.1040 Do all five components of these new source performance standards apply at the same time?
60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?

**Preconstruction Requirements: Materials Separation Plan**

60.1050 Who must submit a materials separation plan?
60.1055 What is a materials separation plan?
60.1060 What steps must I complete for my materials separation plan?
60.1065 What must I include in my draft materials separation plan?
60.1070 How do I make my draft materials separation plan available to the public?
60.1075 When must I accept comments on the materials separation plan?
60.1080 Where and when must I hold a public meeting on my draft materials separation plan?
60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?
60.1090 What must I do with my revised materials separation plan?

60.1095 What must I include in the public meeting on my revised materials separation plan?
60.1100 What must I do with any public comments I receive on my revised materials separation plan?
60.1105 How do I submit my final materials separation plan?

**Preconstruction Requirements: Siting Analysis**

60.1110 Who must submit a siting analysis?
60.1115 What is a siting analysis?
60.1120 What steps must I complete for my siting analysis?
60.1125 What must I include in my siting analysis?
60.1130 How do I make my siting analysis available to the public?
60.1135 When must I accept comments on the siting analysis and revised materials separation plan?
60.1140 Where and when must I hold a public meeting on the siting analysis?
60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?
60.1150 How do I submit my siting analysis?

**Good Combustion Practices: Operator Training**

60.1155 What types of training must I do?
60.1160 Who must complete the operator training course? By when?
60.1165 Who must complete the plant-specific training course?
60.1170 What plant-specific training must I provide?
60.1175 What information must I include in the plant-specific operating manual?
60.1180 Where must I keep the plant-specific operating manual?

**Good Combustion Practices: Operator Certification**

60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?
60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?
60.1195 What if all the certified operators must be temporarily offsite?

**Good Combustion Practices: Operating Requirements**

60.1200 What are the operating practice requirements for my municipal waste combustion unit?
60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

**Emission Limits**

60.1210 What pollutants are regulated by this subpart?
60.1215 What emission limits must I meet? By when?
60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

**Continuous Emission Monitoring**

60.1225 What types of continuous emission monitoring must I perform?
60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?
60.1235 How are the data from the continuous emission monitoring systems used?
60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?
60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?
60.1250 What is my schedule for evaluating continuous emission monitoring systems?
60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?
60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?
60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?
60.1270 What is required for my continuous opacity monitoring system and how are the data used?
60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?
60.1280 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

**Stack Testing**

60.1285 What types of stack tests must I conduct?
60.1290 How are the stack test data used?
60.1295 What schedule must I follow for the stack testing?
60.1300 What test methods must I use to stack test?
60.1305 May I conduct stack testing less often?
60.1310 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

**Other Monitoring Requirements**

60.1315 Must I meet other requirements for continuous monitoring?
60.1320 How do I monitor the load of my municipal waste combustion unit?
60.1325 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?
60.1330 How do I monitor the injection rate of activated carbon?
60.1335 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

**Recordkeeping**

60.1340 What records must I keep?
60.1345 Where must I keep my records and for how long?
60.1350 What records must I keep for the materials separation plan and siting analysis?
60.1355 What records must I keep for operator training and certification?
60.1360 What records must I keep for stack tests?
60.1365 What records must I keep for continuously monitored pollutants or parameters?
60.1370 What records must I keep for municipal waste combustion units that use activated carbon?

**Reporting**

60.1375 What reports must I submit before I submit my notice of construction?
60.1380 What must I include in my notice of construction?
60.1385 What reports must I submit after I submit my notice of construction and in what form?
60.1390 What are the appropriate units of measurement for reporting my data?
60.1395 When must I submit the initial report?
60.1400 What must I include in my initial report?
60.1405 When must I submit the annual report?
60.1410 What must I include in my annual report?
60.1415 What must I do if I am out of compliance with the requirements of this subpart?
60.1420 If a semiannual report is required, when must I submit it?
60.1425 What must I include in the semiannual out-of-compliance reports?
60.1430 Can reporting dates be changed?

**Air Curtain Incinerators That Burn 100 Percent Yard Waste**

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## Introduction

### § 60.1000 What does this subpart do?

This subpart establishes new source performance standards for new small municipal waste combustion units.

### § 60.1005 When does this subpart become effective?

This subpart takes effect June 6, 2001. Some of the requirements in this subpart apply to municipal waste combustion unit planning and must be completed before construction is commenced on the municipal waste combustion unit. In particular, the preconstruction requirements in §§ 60.1050 through 60.1150 must be completed prior to commencing construction. Other requirements (such as the emission limits) apply when the municipal waste combustion unit begins operation.

## Applicability

### § 60.1010 Does this subpart apply to my municipal waste combustion unit?

Yes, if your municipal waste combustion unit meets two criteria:

(a) Your municipal waste combustion unit is a new municipal waste combustion unit.

(b) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

### § 60.1015 What is a new municipal waste combustion unit?

(a) A new municipal waste combustion unit is a municipal waste combustion unit that meets either of two criteria:

(1) Commenced construction after August 30, 1999.

(2) Commenced reconstruction or modification after June 6, 2001.

(b) This subpart does not apply to your municipal waste combustion unit if you make physical or operational changes to an existing municipal waste combustion unit primarily to comply with the emission guidelines in subpart BBBB of this part. Such changes do not qualify as reconstruction or modification under this subpart.

### § 60.1020 Does this subpart allow any exemptions?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* You are exempt from this subpart if you meet four requirements:

(1) Your municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for the exemption.

(4) You provide the Administrator with documentation that the unit qualifies for the exemption.

(c) *Cogeneration facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for the exemption.

(4) You provide the Administrator with documentation that the unit qualifies for the exemption.

(d) *Municipal waste combustion units that combust only tires.* You are exempt from this subpart if you meet three requirements:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with documentation that the unit qualifies for the exemption.

(e) *Hazardous waste combustion units.* You are exempt from this subpart if you get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* You are exempt from this subpart if your unit combusts waste mainly to recover metals. Primary and secondary smelters qualify for the exemption.

(g) *Co-fired combustors.* You are exempt from this subpart if you meet four requirements:

(1) Your unit has a federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for the exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* You are exempt from this subpart if you meet four requirements:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under ''Definitions'' (§ 60.1465).

(2) You record the weights, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weights, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of those feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* You are exempt from this subpart if you meet two requirements:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* You are exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 60.1465 for definition) combusts 100 percent yard waste, you must meet only the requirements under ''Air Curtain Incinerators That Burn 100 Percent Yard Waste'' (§§ 60.1435 through 60.1455).

### § 60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?

If this subpart AAAA applies to your municipal waste combustion unit, then subpart E of this part does not apply to your municipal waste combustion unit.

### § 60.1030 Can the Administrator delegate authority to enforce these Federal new source performance standards to a State agency?

Yes, the Administrator can delegate all authorities in all sections of this

subpart to the State for direct State enforcement.

**§ 60.1035 How are these new source performance standards structured?**

These new source performance standards contain five major components:

(a) Preconstruction requirements.
(1) Materials separation plan.
(2) Siting analysis.
(b) Good combustion practices.
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

**§ 60.1040 Do all five components of these new source performance standards apply at the same time?**

No, you must meet the preconstruction requirements before you commence construction of the municipal waste combustion unit. After the municipal waste combustion unit begins operation, you must meet all of the good combustion practices, emission limits, monitoring, stack testing, and most recordkeeping and reporting requirements.

**§ 60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?**

(a) Yes, this subpart subcategorizes small municipal waste combustion units into two groups based on the aggregate capacity of the municipal waste combustion plant as follows:

(1) *Class I Units.* Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of ''municipal waste combustion plant capacity'' in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(2) *Class II Units.* Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. (See the definition of ''municipal waste combustion plant capacity'' in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) The requirements for Class I and Class II units are identical except for two items:

(1) Class I units have a nitrogen oxides emission limit. Class II units do not have a nitrogen oxides emission limit (see Table 1 of this subpart). Additionally, Class I units have continuous emission monitoring, recordkeeping, and reporting requirements for nitrogen oxides.

(2) Class II units are eligible for the reduced testing option provided in § 60.1305.

## Preconstruction Requirements: Materials Separation Plan

**§ 60.1050 Who must submit a materials separation plan?**

(a) You must prepare a materials separation plan for your municipal waste combustion unit if you commence construction of a new small municipal waste combustion unit after December 6, 2000.

(b) If you commence construction of your municipal waste combustion unit after August 30, 1999 but before December 6, 2000, you are not required to prepare the materials separation plan specified in this subpart.

(c) You must prepare a materials separation plan if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

**§ 60.1055 What is a materials separation plan?**

The plan identifies a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling.

**§ 60.1060 What steps must I complete for my materials separation plan?**

(a) For your materials separation plan, you must complete nine steps:

(1) Prepare a draft materials separation plan.
(2) Make your draft plan available to the public.
(3) Hold a public meeting on your draft plan.
(4) Prepare responses to public comments received during the public comment period on your draft plan.
(5) Prepare a revised materials separation plan.
(6) Discuss the revised plan at the public meeting for review of the siting analysis.
(7) Prepare responses to public comments received on your revised plan.
(8) Prepare a final materials separation plan.
(9) Submit the final materials separation plan.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the materials separation requirements of this subpart.

**§ 60.1065 What must I include in my draft materials separation plan?**

(a) You must prepare and submit a draft materials separation plan for your municipal waste combustion unit and its service area.

(b) Your draft materials separation plan must identify a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling. A materials separation plan may include such elements as dropoff facilities, buy-back or deposit-return incentives, programs for curbside pickup, and centralized systems for mechanical separation.

(c) Your materials separation plan may include different goals or approaches for different subareas in the service area.

(d) Your materials separation plan may exclude materials separation activities for certain subareas or, if warranted, the entire service area.

**§ 60.1070 How do I make my draft materials separation plan available to the public?**

(a) Distribute your draft materials separation plan to the main public libraries in the area where you will construct the municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve two areas:

(1) The area where you will construct the municipal waste combustion unit.
(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.
(2) The time of the public meeting.
(3) The location of the public meeting.
(4) The location of the public libraries where the public can find your materials separation plan. Include the normal business hours of each library.
(5) An agenda of the topics that will be discussed at the public meeting.
(6) The beginning and ending dates of the public comment period on your draft materials separation plan.

**§ 60.1075 When must I accept comments on the materials separation plan?**

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

**§ 60.1080 Where and when must I hold a public meeting on my draft materials separation plan?**

(a) You must hold a public meeting and accept comments on your draft materials separation plan.

(b) You must hold the public meeting in the county where you will construct the municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your draft materials separation plan available to the public.

(d) You may combine the public meeting with any other public meeting required as part of any other Federal, State, or local permit review. However, you may not combine it with the public meeting required for the siting analysis under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1140).

(e) You are encouraged to address eight topics at the public meeting for your draft materials separation plan:

(1) Expected size of the service area for your municipal waste combustion unit.

(2) Amount of waste you will collect in the service area.

(3) Types and estimated amounts of materials proposed for separation.

(4) Methods proposed for materials separation.

(5) Amount of residual waste for disposal.

(6) Alternate disposal methods for handling the residual waste.

(7) Where your responses to public comments on the draft materials separation plan will be available for inspection.

(8) Where your revised materials separation plan will be available for inspection.

(f) You must prepare a transcript of the public meeting on your draft materials separation plan.

**§ 60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?**

You must do three steps:

(a) Prepare written responses to any public comments you received during the public comment period. Summarize the responses to public comments in a document that is separate from your revised materials separation plan.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting.

(c) Prepare a revised materials separation plan for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

**§ 60.1090 What must I do with my revised materials separation plan?**

You must do two tasks:

(a) As specified under ''Reporting'' (§ 60.1375), submit five items to the Administrator by the date you submit the application for a construction permit under 40 CFR part 51, subpart I, or part 52. (If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, submit five items to the Administrator by the date of your notice of construction under § 60.1380):

(1) Your draft materials separation plan.

(2) Your revised materials separation plan.

(3) Your notice of the public meeting for your draft materials separation plan.

(4) A transcript of the public meeting on your draft materials separation plan.

(5) The document that summarizes your responses to the public comments you received during the public comment period on your draft materials separation plan.

(b) Make your revised materials separation plan available to the public as part of the siting analysis procedures under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1130).

**§ 60.1095 What must I include in the public meeting on my revised materials separation plan?**

As part of the public meeting for review of the siting analysis, as specified under ''Preconstruction Requirements: Siting Analysis'' (§ 60.1140), you must discuss two areas:

(a) Differences between your revised materials separation plan and your draft materials separation plan discussed at the first public meeting (§ 60.1080).

(b) Questions about your revised materials separation plan.

**§ 60.1100 What must I do with any public comments I receive on my revised materials separation plan?**

(a) Prepare written responses to any public comments and include them in the document that summarizes your responses to public comments on the siting analysis.

(b) Prepare a final materials separation plan that includes, as appropriate, changes made in response to any public comments you received on your revised materials separation plan.

**§ 60.1105 How do I submit my final materials separation plan?**

As specified under ''Reporting'' (§ 60.1380), submit your final materials separation plan to the Administrator as part of the notice of construction for the municipal waste combustion unit.

## Preconstruction Requirements: Siting Analysis

**§ 60.1110 Who must submit a siting analysis?**

(a) You must prepare a siting analysis if you commence construction of a small municipal waste combustion unit after December 6, 2000.

(b) If you commence construction on your municipal waste combustion unit after August 30, 1999, but before December 6, 2000, you are not required to prepare the siting analysis specified in this subpart.

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

**§ 60.1115 What is a siting analysis?**

The siting analysis addresses how your municipal waste combustion unit affects ambient air quality, visibility, soils, vegetation, and other relevant factors. The analysis can be used to determine whether the benefits of your proposed facility significantly outweigh the environmental and social costs resulting from its location and construction. The analysis must also consider other major industrial facilities near the proposed site.

**§ 60.1120 What steps must I complete for my siting analysis?**

(a) For your siting analysis, you must complete five steps:

(1) Prepare an analysis.

(2) Make your analysis available to the public.

(3) Hold a public meeting on your analysis.

(4) Prepare responses to public comments received on your analysis.

(5) Submit your analysis.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the siting analysis requirements of this subpart.

**§ 60.1125 What must I include in my siting analysis?**

(a) Include an analysis of how your municipal waste combustion unit affects four areas:

(1) Ambient air quality.

(2) Visibility.

(3) Soils.

(4) Vegetation.

(b) Include an analysis of alternatives for controlling air pollution that

minimize potential risks to the public health and the environment.

**§ 60.1130 How do I make my siting analysis available to the public?**

(a) Distribute your siting analysis and revised materials separation plan to the main public libraries in the area where you will construct your municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve two areas:

(1) The area where you will construct your municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your siting analysis and revised materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your siting analysis and revised materials separation plan.

**§ 60.1135 When must I accept comments on the siting analysis and revised materials separation plan?**

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

**§ 60.1140 Where and when must I hold a public meeting on the siting analysis?**

(a) You must hold a public meeting to discuss and accept comments on your siting analysis and your revised materials separation plan.

(b) You must hold the public meeting in the county where you will construct your municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your siting analysis and revised materials separation plan available to the public.

(d) You must prepare a transcript of the public meeting on your siting analysis.

**§ 60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?**

You must do three things:

(a) Prepare written responses to any public comments on your siting analysis and the revised materials separation plan you received during the public comment period. Summarize the responses to public comments in a document that is separate from your materials separation plan and siting analysis.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting for the siting analysis.

(c) Prepare a revised siting analysis for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

**§ 60.1150 How do I submit my siting analysis?**

As specified under ''Reporting'' (§ 60.1380), submit four items as part of the notice of construction:

(a) Your siting analysis.

(b) Your notice of the public meeting on your siting analysis.

(c) A transcript of the public meeting on your siting analysis.

(d) The document that summarizes your responses to the public comments you received during the public comment period.

## Good Combustion Practices: Operator Training

**§ 60.1155 What types of training must I do?**

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the U.S. Environmental Protection Agency (EPA) or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

**§ 60.1160 Who must complete the operator training course? By when?**

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) Those employees must complete the operator training course by the later of three dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

**§ 60.1165 Who must complete the plant-specific training course?**

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

**§ 60.1170 What plant-specific training must I provide?**

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) Six months after your municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

**§ 60.1175 What information must I include in the plant-specific operating manual?**

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable requirements in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

### § 60.1180 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

## Good Combustion Practices: Operator Certification

### § 60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) Six months after the municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of three dates:

(1) Six months after the municipal waste combustion unit initial startup.

(2) December 6, 2001.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

### § 60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certifications, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

### § 60.1195 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the period when the certified chief facility operator and certified shift supervisor are offsite and include that information in the annual report as specified under § 60.1410(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

## Good Combustion Practices: Operating Requirements

### § 60.1200 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under ''Definitions'' (§ 60.1465).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under ''Definitions'' (§ 60.1465).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using equation 4 or 5 in § 60.1460(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

### § 60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

## Emission Limits

### § 60.1210 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

### § 60.1215 What emission limits must I meet? By when?

You must meet the emission limits specified in Tables 1 and 2 of this subpart. You must meet the limits 60 days after your municipal waste combustion unit reaches the maximum load level but no later than 180 days after its initial startup.

### § 60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) apply.

## Continuous Emission Monitoring

### § 60.1225 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

### § 60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, you must also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required, and you must follow the requirements in § 60.1255.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i).

### § 60.1235 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the emission limits specified in Tables 1 and 2 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1290.

### § 60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in Table 3 of this subpart. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 4 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration

drift and quarterly accuracy determinations.

**§ 60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?**

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

**§ 60.1250 What is my schedule for evaluating continuous emission monitoring systems?**

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

**§ 60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?**

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring systems. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3A or 3B in appendix A of this part to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B in appendix A of this part to determine the relationship between oxygen and carbon dioxide.

**§ 60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?**

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides, and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1410(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1265.

**§ 60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?**

(a) Use the equation in § 60.1460(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19 in appendix A of this part, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19 in appendix A of this part, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

**§ 60.1270 What is required for my continuous opacity monitoring system and how are the data used?**

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete the evaluation within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no more than 180 days after its initial startup.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9 in appendix A of this part, as specified in § 60.1300, to determine compliance with the opacity limit in Table 1 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

**§ 60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?**

Use the required span values and applicable performance specifications in Table 4 of this subpart.

**§ 60.1280 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?**

Refer to Table 4 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

## Stack Testing

**§ 60.1285 What types of stack tests must I conduct?**

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

**§ 60.1290 How are the stack test data used?**

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the emission limits in Table 1 of this

subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1235.

### § 60.1295 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1285 within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(b) Conduct annual stack tests for the same pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

### § 60.1300 What test methods must I use to stack test?

(a) Follow Table 5 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all the pollutants consist of at least three test runs, as specified in § 60.8. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the emission limits in Table 1 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1230.

(d) Use the equations in § 60.1460(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in Table 5 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance, waive the requirement for a performance test because you have demonstrated by other means that you are in compliance, or use a shorter sampling time or smaller sampling volume.

### § 60.1305 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In that case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every 3rd year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. The provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 7 nanograms per dry standard cubic meter (total mass) for 2 consecutive years. In that case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. The provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 7 nanograms per dry standard cubic meter (total mass), you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 7 nanograms per dry standard cubic meter (total mass), conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emission levels less than or equal to 7 nanograms per dry standard cubic meter (total mass) for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

### § 60.1310 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 13-month testing schedules specified in §§ 60.1295(b) and 60.1305(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

## Other Monitoring Requirements

### § 60.1315 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

### § 60.1320 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms (or pounds) per hour.

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991),'' section 4 (incorporated by reference in § 60.17(h)(2)).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters,'' 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17(h)(3)).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all

signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

**§ 60.1325 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?**

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

**§ 60.1330 How do I monitor the injection rate of activated carbon?**

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste, and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

**§ 60.1335 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?**

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement and you must notify the Administrator according to § 60.1410(e).

## Recordkeeping

**§ 60.1340 What records must I keep?**

You must keep five types of records:

(a) Materials separation plan and siting analysis.

(b) Operator training and certification.

(c) Stack tests.

(d) Continuously monitored pollutants and parameters.

(e) Carbon feed rate.

**§ 60.1345 Where must I keep my records and for how long?**

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

**§ 60.1350 What records must I keep for the materials separation plan and siting analysis?**

You must keep records of five items:

(a) The date of each record.

(b) The final materials separation plan.

(c) The siting analysis.

(d) A record of the location and date of the public meetings.

(e) Your responses to the public comments received during the public comment periods.

**§ 60.1355 What records must I keep for operator training and certification?**

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of the operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause those people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

**§ 60.1360 What records must I keep for stack tests?**

For stack tests required under § 60.1285, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in Table 1 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

**§ 60.1365 What records must I keep for continuously monitored pollutants or parameters?**

You must keep records of eight items:

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1260 and 60.1335. Record the dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took, or are taking, to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep the records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(h) *Records of calendar dates.* Include the calendar date on each record.

**§ 60.1370 What records must I keep for municipal waste combustion units that use activated carbon?**

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using equation 4 or 5 in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit

at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1335.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

## Reporting

### § 60.1375 What reports must I submit before I submit my notice of construction?

(a) If you are required to submit an application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, you must submit five items by the date you submit your application.

(1) Your draft materials separation plan, as specified in § 60.1065.

(2) Your revised materials separation plan, as specified in § 60.1085(c).

(3) Your notice of the initial public meeting for your draft materials separation plan, as specified in § 60.1070(b).

(4) A transcript of the initial public meeting, as specified in § 60.1080(f).

(5) The document that summarizes your responses to the public comments you received during the initial public comment period, as specified in § 60.1085(a).

(b) If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, you must submit the items in paragraph (a) of this section with your notice of construction.

### § 60.1380 What must I include in my notice of construction?

(a) Include ten items:

(1) A statement of your intent to construct the municipal waste combustion unit.

(2) The planned initial startup date of your municipal waste combustion unit.

(3) The types of fuels you plan to combust in your municipal waste combustion unit.

(4) The capacity of your municipal waste combustion unit including supporting capacity calculations, as specified in § 60.1460(d) and (e).

(5) Your siting analysis, as specified in § 60.1125.

(6) Your final materials separation plan, as specified in § 60.1100(b).

(7) Your notice of the second public meeting (siting analysis meeting), as specified in § 60.1130(b).

(8) A transcript of the second public meeting, as specified in § 60.1140(d).

(9) A copy of the document that summarizes your responses to the public comments you received during the second public comment period, as specified in § 60.1145(a).

(10) Your final siting analysis, as specified in § 60.1145(c).

(b) Submit your notice of construction no later than 30 days after you commence construction, reconstruction, or modification of your municipal waste combustion unit.

### § 60.1385 What reports must I submit after I submit my notice of construction and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1395, 60.1405, and 60.1420. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1400, 60.1410, and 60.1425 onsite for 5 years.

### § 60.1390 What are the appropriate units of measurement for reporting my data?

See Tables 1 and 2 of this subpart for appropriate units of measurement.

### § 60.1395 When must I submit the initial report?

As specified in § 60.7(c), submit your initial report within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

### § 60.1400 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1365(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in Table 2 of this subpart):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 60.1370(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

**§ 60.1405 When must I submit the annual report?**

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act (CAA), the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

**§ 60.1410 What must I include in my annual report?**

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1360(a):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Particulate matter.

(6) Opacity.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List the values for five pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base the value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1365(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using equation 4 or 5 in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1305(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year which gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

**§ 60.1415 What must I do if I am out of compliance with the requirements of this subpart?**

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

**§ 60.1420 If a semiannual report is required, when must I submit it?**

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

**§ 60.1425 What must I include in the semiannual out-of-compliance reports?**

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of your municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(b) If the results of your annual stack tests (as recorded in § 60.1360(a)) show emissions above the limits specified in Table 1 of this subpart for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon

injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 60.1370(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

### § 60.1430 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) for procedures to seek approval to change your reporting date.

## Air Curtain Incinerators that Burn 100 Percent Yard Waste

### § 60.1435 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

### § 60.1440 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in § 60.1465.

(b) Clean wood that is exempt from the definition of ''municipal solid waste'' in § 60.1465.

### § 60.1445 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

If your air curtain incinerator combusts 100 percent yard waste, you must meet only the emission limits in this section.

(a) Within 60 days after your air curtain incinerator reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

### § 60.1450 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 in appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

### § 60.1455 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1460(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c)).

(h) Keep a copy of all reports onsite for a period of 5 years.

## Equations

### § 60.1460 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * (1/(20.9 - CO_2)) \quad \text{(Eq.1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

$C_{unc}$ = uncorrected pollutant concentration.

$CO_2$ = concentration of oxygen (percent).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = (E_{i-o}) * (100/E_i) \quad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

$E_i$ = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_o$ = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HC1}$) using equation 3 of this section:

$$\%P_{HC1} = (E_i - E_o) * (100/E_i) \quad \text{(Eq. 3)}$$

Where:

$\%P_{HC1}$ = percent reduction of the potential hydrogen chloride emissions

$E_I$ = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_O$ = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the municipal waste combustion unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 of this section for plant basis or equation 5 of this section for unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

$f_i$ = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

$h_i$ = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

## Definitions

### § 60.1465 What definitions must I know?

Terms used but not defined in this section are defined in the CAA and in subparts A and B of this part.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

*Air curtain incinerator* means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

*Batch municipal waste combustion unit* means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

*Calendar quarter* means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

*Calendar year* means 365 (or 366 consecutive days for leap years) consecutive days starting on January 1 and ending on December 31.

*Chief facility operator* means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

*Class I units* mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

*Class II units* mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

*Clean wood* means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) ''Yard waste,'' which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of ''municipal solid waste'' in this section.

*Co-fired combustion unit* means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

*Continuous burning* means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

*Continuous emission monitoring system* means a monitoring system *that continuously measures the emissions of a pollutant from a municipal waste combustion unit.*

*Dioxins/furans* mean tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

*Eight-hour block average* means the average of all hourly emission concentrations or parameter levels when

the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

*Federally enforceable* means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

*First calendar half* means the period that starts on January 1 and ends on June 30 in any year.

*Fluidized bed combustion unit* means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

*Four-hour block average* or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4:00 a.m.

(2) 4:00 a.m. to 8:00 a.m.

(3) 8:00 a.m. to 12:00 noon.

(4) 12:00 noon to 4:00 p.m.

(5) 4:00 p.m. to 8:00 p.m.

(6) 8:00 p.m. to 12:00 midnight.

*Mass burn refractory municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

*Mass burn rotary waterwall municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

*Mass burn waterwall municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

*Materials separation plan* means a plan that identifies a goal and an approach for separating certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include three items:

(1) Elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems.

(2) Different goals or approaches for different subareas in the service area.

(3) No materials separation activities for certain subareas or, if warranted, the entire service area.

*Maximum demonstrated load of a municipal waste combustion unit* means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

*Maximum demonstrated temperature of the particulate matter control device* means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this subpart.

*Medical/infectious waste* means any waste meeting the definition of ''medical/infectious waste'' in § 60.51c of subpart E, of this part.

*Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit* means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

*Modification* or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed after June 6, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under section 129 or section 111 of the CAA. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

*Modular excess-air municipal waste combustion unit* means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

*Modular starved-air municipal waste combustion unit* means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

*Municipal solid waste* or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

*Municipal waste combustion plant* means one or more municipal waste combustion units at the same location as specified under Applicability (§ 60.1015(a)and (b)).

*Municipal waste combustion plant capacity* means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are subject to subparts Ea or Eb of this part, or this subpart.

*Municipal waste combustion unit* means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion

units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under Applicability (§ 60.1020(h) and (i)). Municipal waste combustion units also do not include cement kilns that combust municipal solid waste as specified under Applicability (§ 60.1020(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

*Particulate matter* means total particulate matter emitted from municipal waste combustion units as measured using EPA Reference Method 5 in appendix A of this part and the procedures specified in § 60.1300.

*Plastics or rubber recycling unit* means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

*Potential hydrogen chloride emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

*Potential mercury emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

*Potential sulfur dioxide emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

*Pyrolysis/combustion unit* means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

*Reconstruction* means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate those costs, see the definition in this section of ''municipal waste combustion unit.''

*Refractory unit* or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

*Refuse-derived fuel* means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

*Same location* means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

*Second calendar half* means the period that starts on July 1 and ends on December 31 in any year.

*Shift supervisor* means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

*Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit* means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

*Standard conditions* when referring to units of measure mean a temperature of 20 °C and a pressure of 101.3 kilopascals.

*Startup period* means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

*Stoker (refuse-derived fuel) combustion unit* means a steam generating unit that combusts refuse-derived fuel in a semisuspension

combusting mode, using air-fed distributors.

*Total mass dioxins/furans* or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in appendix A of this part and the procedures specified in § 60.1300.

*Twenty-four hour daily average* or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

*Untreated lumber* means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

*Waterwall furnace* means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

*Yard waste* means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in this section.

(2) Clean wood that is exempt from the definition of ''municipal solid waste'' in this section.

**Tables**

TABLE 1 OF SUBPART AAAA—EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS

| For the following pollutants | You must meet the following emission limits[a] | Using the following averaging times | And determine compliance by the following methods |
|---|---|---|---|
| 1. Organics | | | |
| Dioxins/Furans (total mass basis). | 13 nanograms per dry standard cubic meter. | 3-run average (minimum run duration is 4 hours). | Stack test. |
| 2. Metals: | | | |
| Cadmium | 0.020 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| Lead | 0.20 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| Mercury | 0.080 milligrams per dry standard cubic meter or 85 percent reduction of potential mercury emissions. | 3-run average (run duration specified in test method). | Stack test. |
| Opacity | 10 percent | Thirty 6-minute averages | Stack test. |
| Particulate Matter | 24 milligrams per dry standard cubic meter | 3-run average (run duration specified in test method). | Stack test. |
| 3. Acid Gases: | | | |
| Hydrogen Chloride | 25 parts per million by dry volume or 95 percent reduction of potential hydrogen chloride emissions. | 3-run average (minimum run duration is 1 hour). | Stack test |
| Nitrogen Oxides (Class I units)[b]. | 150 (180 for 1st year of operation) parts per million by dry volume. | 24-hour daily block arithmetic average concentration. | Continuous emission monitoring system. |
| Nitrogen Oxides (Class II units)[c]. | 500 parts per million by dry volume | See footnote[d] | See footnote[d] |
| Sulfur Dioxide | 30 parts per million by dry volume or 80 percent reduction of potential sulfur dioxide emissions. | 24-hour daily block geometric average concentration or percent reduction. | Continuous monitoring emission system. |
| 4. Other: | | | |
| Fugitive Ash | Visible emissions for no more than 5 percent of hourly observation period. | Three 1-hour observation periods | Visible emission test. |

[a] All emission limits (except for opacity) are measured at 7 percent oxygen.

[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

[c] Class II units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity no more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

[d] No monitoring, testing, recordkeeping, or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

TABLE 2 OF SUBPART AAAA—CARBON MONOXIDE EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS

| For the following municipal waste combustion units | You must meet the following carbon monoxide limits[a] | Using the following averaging times[b] |
|---|---|---|
| 1. Fluidized-bed | 100 parts per million by dry volume | 4-hour. |
| 2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel) | 200 parts per million by dry volume | 24-hour.[c] |
| 3. Mass burn rotary refractory | 100 parts per million by dry volume | 4-hour. |

TABLE 2 OF SUBPART AAAA—CARBON MONOXIDE EMISSION LIMITS FOR NEW SMALL MUNICIPAL WASTE COMBUSTION UNITS—Continued

| For the following municipal waste combustion units | You must meet the following carbon monoxide limits [a] | Using the following averaging times [b] |
|---|---|---|
| 4. Mass burn rotary waterwall | 100 parts per million by dry volume | 24-hour. |
| 5. Mass burn waterwall and refractory | 100 parts per million by dry volume | 4-hour. |
| 6. Mixed fuel-fired (pulverized coal/refuse-derived fuel) | 150 parts per million by dry volume | 4-hour. |
| 7. Modular starved-air and excess air | 50 parts per million by dry volume | 4-hour. |
| 8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel). | 150 parts per million by dry volume | 24-hour daily. |
| 9. Stoker, refuse-derived fuel | 150 parts per million by dry volume | 24-hour daily. |

[a] All limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.
[b] Block averages, arithmetic mean. See § 60.1465 for definitions.
[c] 24-hour block average, geometric mean. See § 60.1465 for definitions.

TABLE 3 OF SUBPART AAAA—REQUIREMENTS FOR VALIDATING CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

| For the following continuous emission monitoring systems | Use the following methods in appendix A of this part to validate pollutant concentration levels | Use the following methods in appendix A of this part to measure oxygen (or carbon dioxide) |
|---|---|---|
| 1. Nitrogen Oxides (Class I units only) [a] | Method 7, 7A, 7B, 7C, 7D, or 7E | Method 3 or 3A. |
| 2. Sulfur Dioxide | Method 6 or 6C | Method 3 or 3A. |
| 3. Carbon Monoxide | Method 10, 10A, or 10B | Method 3 or 3A. |

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

TABLE 4 OF SUBPART AAAA—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

| For the following pollutants | Use the following span values for your CEMS | Use the following performance specifications in appendix B of this part for your CEMS | If needed to meet minimum data requirements, use the following alternate methods in appendix A of this part to collect data |
|---|---|---|---|
| 1. Opacity | 100 percent opacity | P.S. 1 | Method 9. |
| 2. Nitrogen Oxides (Class I units only) [a]. | Control device outlet: 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit. | P.S. 2 | Method 7E. |
| 3. Sulfur Dioxide | Inlet to control device: 125 percent of the maximum expected sulfur dioxide emissions of the municipal waste combustion unit. Control device outlet: 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit. | P.S. 2 | Method 6C. |
| 4. Carbon Monoxide | 125 percent of the maximum expected hourly potential carbon with monoxide emissions of the municipal waste combustion unit. | P.S. 4A | Method 10 alternative interference trap. |
| 5. Oxygen or Carbon Dioxide | 25 percent oxygen or 25 percent carbon dioxide | P.S. 3 | Method 3A or 3B. |

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity more than 250 tons per day of municipal solid waste. See § 60.1465 for definitions.

TABLE 5 OF SUBPART AAAA—REQUIREMENTS FOR STACK TESTS

| To measure the following pollutants | Use the following methods in appendix A of this part to determine the sampling location | Use the methods in appendix A of this part to measure pollutant concentration | Also note the following additional information |
|---|---|---|---|
| 1. Organics: | | | |
| Dioxins/Furans | Method 1 | Method 23 [a] | The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load. |
| 2. Metals: | | | |
| Cadmium | Method 1 | Method 29 [a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |
| Lead | Method 1 | Method 29 [a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |

TABLE 5 OF SUBPART AAAA—REQUIREMENTS FOR STACK TESTS—Continued

| To measure the following pollutants | Use the following methods in appendix A of this part to determine the sampling location | Use the methods in appendix A of this part to measure pollutant concentration | Also note the following additional information |
|---|---|---|---|
| Mercury | Method 1 | Method 29 [a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |
| Opacity | Method 9 | Method 9 | Use Method 9 to determine compliance with opacity limit. 3-hour observation period (thirty 6-minute averages). |
| Particulate Matter | Method 1 | Method 5 [a] | The minimum sample Matter volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14°C. The minimum sampling time is 1 hour. |
| 3. Acid Gases: [b] | | | |
| Hydrogen Chloride | Method 1 | Method 26 or 26A [a] | Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load. |
| 4. Other: [b] | | | |
| Fugitive Ash | Not applicable | Method 22 (visible emissions). | The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks. |

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B in appendix A of this part.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for quality assurance requirements in Appendix F of this part.

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December 6, 2000

# Part III

# Environmental Protection Agency

## 40 CFR Part 60

## Emission Guidelines for Existing Small Municipal Waste Combustion Units; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD–FRL–6899–5]**

**RIN 2060–AI51**

## Emission Guidelines for Existing Small Municipal Waste Combustion Units

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action reestablishes emission guidelines for existing small municipal waste combustion (MWC) units. The emission guidelines contain stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Some of those pollutants can cause toxic effects such as eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage. Emission guidelines for small MWC units were originally promulgated in December 1995, but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units.

**DATES:** *Effective date.* February 5, 2001.

The incorporation by reference of certain publications listed in this rule are approved by the Director of the Office of the Federal Register as of February 5, 2001.

*Applicability date.* The emission guidelines apply to small MWC units that commenced construction on or before August 30, 1999.

**ADDRESSES:** Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for the emission guidelines. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code-6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Copland at (919) 541–5265, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: copland.rick@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Public Comments

Emission guidelines and companion new source performance standards (NSPS) for small MWC units were proposed on August 30, 1999 (64 FR 47276), and 48 comment letters were received on the proposals. Verbal comments were also received at the October 5, 1999 public hearing. The comment letters and a transcript of the public hearing are available in Docket No. A–98–18. A summary of and responses to the public comments are contained in ''Small Municipal Waste Combustors: Background Information Document for New Source Performance Standards and Emission Guidelines-Public Comments and Responses (EPA–453/R–00–001).'' In response to the public comments, EPA adjusted the final emission guidelines where appropriate. A copy of the background information document is located in Docket No. A–98–18.

### World Wide Web

Electronic versions of this action, the regulatory text, and other background information, including the response to comments document, are available at the Technology Transfer Network web site (TTN Web) that EPA has established for the emission guidelines for small MWC units: ''http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html.'' For assistance in downloading files, call the EPA's TTN Web Help Line at (919) 541–5384.

### Regulated Entities

No entities are directly regulated by this action because these are emission guidelines. Additional State or Federal action is required for implementation of the emission guidelines. However, adoption of State or Federal plans implementing the emission guidelines will affect the following categories of sources:

| Category | NAICS codes | SIC codes | Examples of regulated entities |
|---|---|---|---|
| Industry, Federal government, and State/local/tribal governments. | 562213, 92411 | 4953 9511 | Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste. |

The above list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to be regulated by applicable State or Federal plans implementing the emission guidelines for small MWC units. Not all facilities classified under the NAICS and SIC codes will be affected. Other types of entities not listed could also be affected. To determine whether your facility will be regulated by State or Federal plans implementing the emission guidelines, carefully examine the applicability criteria in §§ 60.1550 through 60.1565 of the emission guidelines.

### Judicial Review

Today's action of adopting a final rule for small MWC units constitutes final administrative action on the proposed emission guidelines for small MWC units. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 5, 2001. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by EPA to enforce the requirements.

### Organization of This Document

The following outline is provided to aid in locating information in this preamble.

I. Background Information
II. Summary of the Emission Guidelines
A. Sources Regulated by the Emission Guidelines

B. Subcategorization of the Small MWC Unit Population
C. Pollutants Regulated by the Emission Guidelines
D. Format of the Emission Limits
E. Summary of the Emission Guidelines
III. Changes to the Emission Guidelines
IV. Impacts of the Emission Guidelines
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Rule for New Small MWC Units
VI. Amendments to 40 CFR Part 60, Subpart B
VII. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 13132: Federalism
C. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
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

**Abbreviations and Acronyms Used in This Document**

ASME American Society of Mechanical Engineers
CFR Code of Federal Regulations
EIA Economic Impact Analysis
EPA U.S. Environmental Protection Agency
FR **Federal Register**
ICR Information Collection Request
kg/year Kilograms per year
MACT Maximum achievable control technology
Mg/year Megagrams per year
MSW Municipal solid waste
MWC Municipal waste combustion
NAICS North American Industrial Classification System
NSPS New source performance standards
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OP Office of Policy
Pub. L. Public Law
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SIC Standard Industrial Classification
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code

## I. Background Information

On December 19, 1995, EPA promulgated emission guidelines for large and small MWC units under 40 CFR part 60, subpart Cb. The emission guidelines covered existing MWC units located at plants with an aggregate plant combustion capacity greater than 35 megagrams per day of municipal solid waste (MSW)(approximately 39 tons per day of MSW). The 1995 emission guidelines divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants. Plant size was based on the total aggregate capacity of all individual MWC units at a MWC plant.

Litigation followed the promulgation of the 1995 emission guidelines. In 1997, the U.S. Court of Appeals for the District of Columbia Circuit ruled that EPA must develop regulations for small MWC units (units with an individual MWC capacity of 250 tons per day or less) separately from regulations for large MWC units (units with an individual MWC unit capacity greater than 250 tons per day), indicating that the 1995 emission guidelines were not consistent with section 129 of the CAA. The court directed EPA to revise the 1995 emission guidelines so that they applied only to large MWC units, and the court vacated the 1995 emission guidelines as they applied to small MWC units. In response to the court ruling, EPA amended the 1995 emission guidelines on August 25, 1997 so that they applied only to existing large MWC units. Then, on August 30, 1999, EPA proposed emission guidelines for small MWC units with an individual unit capacity of 35 to 250 tons per day.

Today's final rule reestablishes emission guidelines for existing small MWC units with capacities of 35 to 250 tons per day of MSW under 40 CFR part 60, subpart BBBB.

## II. Summary of the Emission Guidelines

The following summarizes the final emission guidelines for small MWC units, including identification of the subcategories used in the final emission guidelines. Overall, the emission guidelines for small MWC units are equivalent to the 1995 emission guidelines for small MWC units.

### *A. Sources Regulated by the Emission Guidelines*

Today's emission guidelines do not directly regulate any MWC units, but they require States to develop plans to limit air emissions from existing small MWC units. In subpart BBBB and in associated State plans, the emission limits and requirements will apply to each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of MSW and commenced construction on or before August 30, 1999. Small MWC units that commenced construction after August 30, 1999 are not covered under the emission guidelines (subpart BBBB). Those units will be subject to the NSPS for new small MWC units (subpart AAAA) which are published separately in today's **Federal Register**.

### *B. Subcategorization of the Small MWC Unit Population*

Within the emission guidelines, the small MWC unit population is subcategorized based on aggregate capacity of the plant where the individual small MWC unit is located. The resulting subcategories are as follows: Class I units are small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW; Class II units are small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

### *C. Pollutants Regulated by the Emission Guidelines*

Section 129 of the CAA requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *.

Therefore, in addition to emission limits, EPA is establishing requirements for MWC unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also establishing requirements for the control of fugitive ash emissions. All of those requirements were contained in the 1995 emission guidelines.

### *D. Format of the Emission Limits*

The format of the emission limits is identical to the format of the emission limits in the 1995 emission guidelines: emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are the same as the 1995 emission guidelines. In addition to controlling stack emissions, the emission guidelines incorporate good combustion practice requirements (*i.e.*, operator training, operator certification, and MWC unit operating requirements).

*E. Summary of the Emission Guidelines*

A concise summary of the emission guidelines can be found in Tables 2 through 4 of subpart BBBB.

## III. Changes to the Emission Guidelines

For the majority of small MWC units that will be subject to emission guideline requirements, the final emission guidelines are identical to the emission guidelines proposed in August 1999. However, one change made in the final emission guidelines affects requirements for about five MWC plants. That change is summarized in the following three paragraphs and is also discussed in the background information document described earlier under ''Public Comments.''

In the proposal, different emission limits were proposed for MWC units in Class A and Class B. Class A MWC units were nonrefractory MWC units located at MWC plants with an aggregate plant capacity greater than 250 tons per day. Class B MWC units were refractory units located at MWC plants with an aggregate plant capacity greater than 250 tons per day. The 1999 proposal included different emission limits for Class A and Class B units because it had been brought to EPA's attention that different flue gas flow rates per ton of MSW combusted were expected to occur at Class A and Class B units. The 1995 emission guidelines did not make the distinction in flue gas flow rates and treated Class A and Class B units as a combined class with the same requirements.

Some comments on the proposal indicated that the proposed subcategorization with different control requirements for Class A and Class B was appropriate. However, other comments on the proposal indicated that the technical bases for the Class A and Class B subcategorization was no longer valid for today's MWC units and the subcategory was inappropriate. The EPA reanalyzed the issue and has concluded that the flue gas flow rates for Class A and Class B MWC units are not significantly different. As a result, the Class A units and the Class B units are combined into a single Class I category in the final emission guidelines as had been done in the 1995 emission guidelines.

Maximum achievable control technology (MACT) floors were then calculated for the Class I units, and then new MACT limits were selected. Uniform emission limits now apply to all Class I MWC units. With the exception of nitrogen oxides, the final emission limits for Class I units are identical to the 1995 emission limits for Class I units. The full set of final emission limits for Class I and Class II can be found in Tables 2, 3 and 4 of Subpart BBBB. See the background information document for a discussion of other comments on the proposed emission guidelines.

## IV. Impacts of the Emission Guidelines

The following describes the impacts (*i.e.*, air, water, solid waste, energy, cost, and economic impacts) of the emission guidelines for small MWC units. The impact analysis conducted to evaluate the 1995 emission guidelines still applies because the air pollution control requirements in the final emission guidelines are the same as the 1995 emission guidelines. The 1995 analysis is available at 59 FR 48228. The discussion in this preamble focuses only on the air, cost, and economic impacts of the final emission guidelines.

As discussed in the preamble for the 1995 emission guidelines, EPA determined that the water, solid waste, and energy impacts associated with the emission guidelines were not significant. Today's action affects only a subset of the MWC units that were addressed in the earlier impact analysis. Accordingly, EPA has concluded that the water, solid waste, and energy impacts associated with today's action are not significant.

For further information on the impacts of the emission guidelines, refer to ''Economic Impact Analysis (EIA): Small Municipal Waste Combustion Units—Emission Guidelines and New Source Performance Standards'' March 2000 (EPA–452/R–00–001).

*A. Air Impacts*

As discussed in the EIA, the EPA estimates that 90 small MWC units operating at 41 plants will be affected by the emission guidelines. The total MSW combustion capacity of the 90 units was 8,551 tons per day in 1998.

Table 1 of this preamble presents the national air emission reductions for existing small MWC units that will result from full implementation of the emission guidelines compared to 1998 baseline levels without the emission guidelines.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THE EMISSION GUIDELINES FOR SMALL MWC UNITS

| Pollutant | Air emissions reduction | Emission level [a] |
|---|---|---|
| Dioxins/ Furans[b]. | 2.7 kg/year ..... | 97 |
| Cadmium ..... | 310 kg/year ..... | 85 |
| Lead ..... | 12.9 Mg/year .... | 92 |
| Mercury ..... | 4.1 Mg/year ..... | 95 |
| Particulate Matter. | 369 Mg/year ..... | 77 |
| Sulfur Dioxide | 1,368 Mg/year .. | 56 |
| Hydrogen Chloride. | 2,456 Mg/year .. | 88 |
| Nitrogen Oxides. | 384 Mg/year ..... | 9 |

[a] Percent reduction from 1998 baseline.
[b] Percent national emission reduction relative to national baseline emissions that would occur in the absence of the emission guidelines.
[c] Total mass of tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

*B. Cost and Economic Impacts*

To estimate the costs of the emission guidelines, EPA has taken into account all of the existing air pollution control equipment currently in operation at small MWC units. The cost estimates presented here are incremental costs over the control equipment already in use. For more details on the cost and economic analysis, refer to the EIA.

The total annual cost (including annualized capital and operating costs) of the final emission guidelines would be approximately $68 million, which is equivalent to $25.30 per ton of MSW combusted.

## V. Companion Rule for New Small MWC Units

A companion rule to reestablish NSPS for new small MWC units is being published separately in today's **Federal Register**. The NSPS for new small MWC units are contained in 40 CFR part 60, subpart AAAA.

## VI. Amendments to 40 CFR Part 60, Subpart B

Also included in today's **Federal Register** is a rule to amend subpart B of part 60, ''Adoption and Submittal of State Plans for Designated Facilities.'' The EPA proposed two amendments to subpart B, which are fully described in the proposal to reestablish emission guidelines for small MWC units (64 FR 47241). The EPA received no comments on the amendments to subpart B; therefore, the amendments are being promulgated as proposed.

## VII. Administrative Requirements

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action

is ''significant,'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, 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, EPA has determined that this final rule is not a ''significant regulatory action'' and, therefore, is not subject to OMB review. The EPA submitted the 1995 rulemaking package (which included requirements for new and existing large MWC units and requirements for new and existing small MWC units) to OMB for review (60 FR 65405, December 19, 1995) and OMB approved the rulemaking package for adoption. The emission guidelines promulgated today only apply to small MWC units and are projected to have an impact of approximately $68 million annually.

*B. Executive Order 13132: Federalism*

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'' are 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 proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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 State plans are used to implement the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule. Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with State and local officials in developing this final rule. A list of those consultations is provided in the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995).

*C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

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

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

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 Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further, it is based on technology performance and not on health and safety risks.

*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, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final

rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the emission guidelines do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The EIA shows that the total annual costs of the emission guidelines is about $68 million per year, starting on the 5th year after the rule is promulgated. Thus, today's emission guidelines are not subject to the requirements of sections 202 and 205 of the UMRA. Although the emission guidelines are not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of the UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with the UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines. Because today's final emission guidelines are equivalent to the 1995 emission guidelines, no additional consultations were necessary.

*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 Federal agencies to prepare a regulatory flexibility analysis of any 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 today's final rule on small entities, a small entity is defined as: (1) A small business in the regulated industry that has a gross annual revenue less than $6 million; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined in a regulatory flexibility analysis that eight existing small MWC units (operated by one small business and seven small governments) that would be subject to the emission guidelines are considered ''small entities'' according to the Small Business Administration's definitions for the affected industries. Also in the initial analysis, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for the relevant population of owning governments for the MWC units that are considered small entities. The estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small potentially affected government entities and 39 percent for the one small business. For the seven potentially affected government entities, the maximum compliance cost was 0.25 percent. None of the governmental impacts are considered significant. The impact on the one small business is considered significant but one small business is not a substantial number of entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of this final rule on small entities by establishing different requirements for Class I and Class II MWC units and establishing provisions for less frequent testing for Class II MWC units. In addition, EPA involved representatives of small entities in the development of the emission guidelines.

*G. Paperwork Reduction Act*

The OMB has approved the information collection requirements in the emission guidelines under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0424.

The information will be used to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to identify small MWC units that might not be in compliance with the emission guidelines. Based on reported information, the implementing agency will decide which small MWC units should be inspected and what records or processes should be inspected. Records that owners and operators of small MWC units maintain indicate whether personnel are operating and maintaining control equipment properly.

The recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after promulgation of the emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information collection requirements contained in this final rule.

*H. National Technology Transfer and Advancement Act*

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

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards applicable to the small MWC emission guidelines that could be used in process and emissions monitoring. The search for emissions monitoring procedures identified 29 voluntary consensus standards that initially appeared to have possible use in lieu of EPA standard reference methods. After reviewing the available standards, EPA determined that 21 of the candidate consensus standards identified for measuring emissions or surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The seven remaining candidate consensus standards are under development or currently under EPA review. The EPA plans to follow, review and consider adopting those standards after their development and further review by EPA is completed.

One consensus standard, American Society for Testing and Materials (ASTM) D6216–98, is practical for EPA use in EPA Performance Specification 1 (PS–1) (40 CFR part 60, appendix B). The ASTM D6216 can best be used in place of the design specification verification procedures currently in sections 5 and 6 of PS–1. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824). Comments from the proposal have been addressed, and EPA expects to complete that action in the near future. For the above reasons, EPA does not in this final rulemaking adopt ASTM D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from another rulemaking activity already undergoing promulgation, and because ASTM D6216 does not address all of the requirements specified in PS–1.

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for MWC unit load level (steam output); designing, constructing, installing, calibrating, and using nozzles and orifices; and MWC plant operator certification requirements.

One consensus standard by the American Society of Mechanical Engineers (ASME) was identified for potential use in this final rule for the measurement of MWC unit load level (steam output). The EPA believes the standard is practical to use in this final rule as the method to measure MWC unit load. The EPA has already incorporated by reference ''ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)'' in 40 CFR 60.17(h)(3).

A second consensus standard by ASME was identified for potential use in this final rule for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes the standard is practical to use for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA has already incorporated by reference ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971)'' in 40 CFR 60.17(h)(3).

A third consensus standard by ASME (QRO–1–1994) was identified for potential use in this final rule for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes the standard is practical to use in the emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME. The EPA has already incorporated by reference (QRO–1–1994) in 40 CFR 60.17(h)(1).

Tables 5, 6 and 7 of subpart BBBB list the EPA testing methods and performance standards included in this final rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of subpart A of part 60, the standard also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in the final rule.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final 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 final rule will be effective February 5, 2001.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Municipal waste combustion, Reporting and recordkeeping requirements.

Dated: November 3, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7601.

## Subpart A—General Provisions

2. Section 60.17 is amended by revising paragraphs (h)(1), (h)(2) and (h)(3) to read as follows:

**§ 60.17 Incorporations by reference.**

* * * * *

(h) * * *

(1) ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators, IBR approved for §§ 60.56a, 60.54b(a), 60.54b(b), 60.1675(a), and 60.1675(c)(2).

(2) ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for §§ 60.46b, 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), and 60.1810(a)(3).

(3) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for §§ 60.58a(h)(6)(ii), 60.58b(i)(6)(ii), and 60.1810(a)(4).

* * * * *

## Subpart B—Adoption and Submittal of State Plans for Designated Facilities

3. Section 60.24 is amended by revising paragraph (e)(1) to read as follows:

### § 60.24 Emission standards and compliance schedules.

* * * * *

(e)(1) Any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

* * * * *

4. Section 60.27 is amended by revising paragraph (f) to read as follows:

### § 60.27 Actions by the Administrator.

* * * * *

(f) Prior to promulgation of a plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23(c); or

(2) Washington, DC or an alternate location specified in the **Federal Register**.

4. Part 60 is amended by adding a new subpart BBBB to read as follows:

## Subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999

### Introduction

Sec.
60.1500 What is the purpose of this subpart?
60.1505 Am I affected by this subpart?
60.1510 Is a State plan required for all States?
60.1515 What must I include in my State plan?
60.1520 Is there an approval process for my State plan?
60.1525 What if my State plan is not approvable?
60.1530 Is there an approval process for a negative declaration letter?
60.1535 What compliance schedule must I include in my State plan?
60.1540 Are there any State plan requirements for this subpart that supersede the requirements specified in subpart B?
60.1545 Does this subpart directly affect municipal waste combustion unit owners and operators in my State?

### Applicability of State Plans

60.1550 What municipal waste combustion units must I address in my State plan?
60.1555 Are any small municipal waste combustion units exempt from my State plan?
60.1560 Can an affected municipal waste combustion unit reduce its capacity to less than 35 tons per day rather than comply with my State plan?
60.1565 What subcategories of small municipal waste combustion units must I include in my State plan?

### Use of Model Rule

60.1570 What is the ''model rule'' in this subpart?
60.1575 How does the model rule relate to the required elements of my State plan?
60.1580 What are the principal components of the model rule?

### Model Rule—Increments of Progress

60.1585 What are my requirements for meeting increments of progress and achieving final compliance?
60.1590 When must I complete each increment of progress?
60.1595 What must I include in the notifications of achievement of my increments of progress?
60.1600 When must I submit the notifications of achievement of increments of progress?
60.1605 What if I do not meet an increment of progress?
60.1610 How do I comply with the increment of progress for submittal of a control plan?
60.1615 How do I comply with the increment of progress for awarding contracts?
60.1620 How do I comply with the increment of progress for initiating onsite construction?
60.1625 How do I comply with the increment of progress for completing onsite construction?
60.1630 How do I comply with the increment of progress for achieving final compliance?
60.1635 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?
60.1640 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

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60.1645 What types of training must I do?
60.1650 Who must complete the operator training course? By when?
60.1655 Who must complete the plant-specific training course?
60.1660 What plant-specific training must I provide?
60.1665 What information must I include in the plant-specific operating manual?
60.1670 Where must I keep the plant-specific operating manual?

### Model Rule—Good Combustion Practices: Operator Certification

60.1675 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?
60.1680 After the required date for operator certification, who may operate the municipal waste combustion unit?
60.1685 What if all the certified operators must be temporarily offsite?

### Model Rule—Good Combustion Practices: Operating Requirements

60.1690 What are the operating practice requirements for my municipal waste combustion unit?
60.1695 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

### Model Rule—Emission Limits

60.1700 What pollutants are regulated by this subpart?
60.1705 What emission limits must I meet? By when?
60.1710 What happens to the emission limits during periods of startup, shutdown, and malfunction?

### Model Rule—Continuous Emission Monitoring

60.1715 What types of continuous emission monitoring must I perform?
60.1720 What continuous emission monitoring systems must I install for gaseous pollutants?
60.1725 How are the data from the continuous emission monitoring systems used?
60.1730 How do I make sure my continuous emission monitoring systems are operating correctly?
60.1735 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?
60.1740 What is my schedule for evaluating continuous emission monitoring systems?
60.1745 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?
60.1750 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?
60.1755 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

60.1760 What is required for my continuous opacity monitoring system and how are the data used?
60.1765 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?
60.1770 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?

**Model Rule—Stack Testing**

60.1775 What types of stack tests must I conduct?
60.1780 How are the stack test data used?
60.1785 What schedule must I follow for the stack testing?
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60.1795 May I conduct stack testing less often?
60.1800 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?

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60.1810 How do I monitor the load of my municipal waste combustion unit?
60.1815 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?
60.1820 How do I monitor the injection rate of activated carbon?
60.1825 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

**Model Rule—Recordkeeping**

60.1830 What records must I keep?
60.1835 Where must I keep my records and for how long?
60.1840 What records must I keep for operator training and certification?
60.1845 What records must I keep for stack tests?
60.1850 What records must I keep for continuously monitored pollutants or parameters?
60.1855 What records must I keep for municipal waste combustion units that use activated carbon?

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60.1860 What reports must I submit and in what form?
60.1865 What are the appropriate units of measurement for reporting my data?
60.1870 When must I submit the initial report?
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60.1880 When must I submit the annual report?
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60.1895 If a semiannual report is required, when must I submit it?
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60.1910 What is an air curtain incinerator?
60.1915 What is yard waste?
60.1920 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?
60.1925 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?
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**Equations**

60.1935 What equations must I use?

**Definitions**

60.1940 What definitions must I know?

## Tables

Table 1 of Subpart BBBB—Model Rule—Compliance Schedules and Increments of Progress
Table 2 of Subpart BBBB—Model Rule—Class I Emission Limits For Existing Small Municipal Waste Combustion Units
Table 3 of Subpart BBBB—Model Rule—Class I Nitrogen Oxides Emission Limits For Existing Small Municipal Waste Combustion Units
Table 4 of Subpart BBBB—Model Rule—Class II Emission Limits For Existing Small Municipal Waste Combustion Units
Table 5 of Subpart BBBB—Model Rule—Carbon Monoxide Emission Limits For Existing Small Municipal Waste Combustion Units
Table 6 of Subpart BBBB—Model Rule—Requirements for Validating Continuous Emission Monitoring Systems (CEMS)
Table 7 of Subpart BBBB—Model Rule—Requirements for Continuous Emission Monitoring Systems (CEMS)
Table 8 of Subpart BBBB—Model Rule—Requirements for Stack Tests

## Introduction

### § 60.1500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from existing small municipal waste combustion units. The pollutants addressed by the emission guidelines are listed in Tables 2, 3, 4, and 5 of this subpart. The emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act (CAA) and subpart B of this part.

### § 60.1505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing small municipal waste combustion units that commenced construction on or before August 30, 1999, you must submit a State plan to the U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA by December 6, 2001.

### § 60.1510 Is a State plan required for all States?

No, you are not required to submit a State plan if there are no existing small municipal waste combustion units in your State and you submit a negative declaration letter in place of the State plan.

### § 60.1515 What must I include in my State plan?

(a) Include nine items:

(1) Inventory of affected municipal waste combustion units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected municipal waste combustion units in your State.

(3) Compliance schedules for each affected municipal waste combustion unit.

(4) Good combustion practices and emission limits for affected municipal waste ombustion units that are at least as protective as the emission guidelines contained in this subpart.

(5) Stack testing, continuous emission monitoring, recordkeeping, and reporting requirements.

(6) Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the CAA sections 111(d) and 129 State plan.

(b) Your State plan can deviate from the format and content of the emission guidelines contained in this subpart. However, if your State plan does deviate, you must demonstrate that your State plan is as protective as the emission guidelines contained in this subpart. Your State plan must address

regulatory applicability, increments of progress for retrofit, operator training and certification, operating practice, emission limits, continuous emission monitoring, stack testing, recordkeeping, reporting, and air curtain incinerator requirements.

(c) Follow the requirements of subpart B of this part in your State plan.

**§ 60.1520 Is there an approval process for my State plan?**

The EPA will review your State plan according to § 60.27.

**§ 60.1525 What if my State plan is not approvable?**

If you do not submit an approvable State plan (or a negative declaration letter), EPA will develop a Federal plan, according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of municipal waste combustion units not covered by an approved and currently effective State plan must comply with the Federal plan. The Federal plan is an interim action and, by its own terms, will cease to apply when your State plan is approved and becomes effective.

**§ 60.1530 Is there an approval process for a negative declaration letter?**

No, the EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing small municipal waste combustion unit is identified in your State, the Federal plan implementing the emission guidelines contained in this subpart will automatically apply to that municipal waste combustion unit until your State plan is approved.

**§ 60.1535 What compliance schedule must I include in my State plan?**

(a) Your State plan must include compliance schedules that require small municipal waste combustion units to achieve final compliance or cease operation as expeditiously as practicable but not later than the earlier of two dates:

(1) December 6, 2005.

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules longer than 1 year after the effective date of State plan approval, State plans must include two items:

(1) Dates for enforceable increments of progress as specified in § 60.1590.

(2) For Class I units (see definition in § 60.1940), dioxins/furans stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 60.1790.

(c) Class I units that commenced construction after June 26, 1987 must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 of this subpart by the later of two dates:

(1) One year after the effective date of State plan approval.

(2) One year following the issuance of a revised construction or operation permit, if a permit modification is required.

**§ 60.1540 Are there any State plan requirements for this subpart that supersede the requirements specified in subpart B?**

Subpart B of this part establishes general requirements for developing and processing CAA section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part, for two items:

(a) *Option for case-by-case less stringent emission standards and longer compliance schedules.* State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all municipal waste combustion units to comply no later than December 6, 2005. That requirement applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) *Increments of progress requirements.* For Class II units (see definition in § 60.1940), a State plan must include at least two increments of progress for the affected municipal waste combustion units. The two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). That requirement applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all municipal waste combustion units. For Class I units under this subpart, the final control plan must contain the five increments of progress in § 60.24(e)(1).

**§ 60.1545 Does this subpart directly affect municipal waste combustion unit owners and operators in my State?**

(a) No, this subpart does not directly affect municipal waste combustion unit owners and operators in your State. However, municipal waste combustion unit owners and operators must comply with the State plan you developed to implement the emission guidelines contained in this subpart. Some States may incorporate the emission guidelines contained in this subpart into their State plans by direct incorporation by reference. Others may include the model rule text directly in their State plan.

(b) All municipal waste combustion units must be in compliance with the requirements established in this subpart by December 6, 2005, whether the municipal waste combustion unit is regulated under a State or Federal plan.

## Applicability of State Plans

**§ 60.1550 What municipal waste combustion units must I address in my State plan?**

(a) Your State plan must address all existing small municipal waste combustion units in your State that meet two criteria:

(1) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(b) If an owner or operator of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after June 6, 2001 for subpart AAAA of this part, the municipal waste combustion unit becomes subject to subpart AAAA of this part and the State plan no longer applies to that unit.

(c) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with your State plan, subpart AAAA of this part (New Source Performance Standards for New Small Municipal Waste Combustion Units) does not apply to that unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of this part.

**§ 60.1555 Are any small municipal waste combustion units exempt from my State plan?**

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from your State plan if four requirements are met:

(1) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* Units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You are notified by the owner or operator that the unit qualifies for the exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(c) *Cogeneration units.* Units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You are notified by the owner or operator that the unit qualifies for the exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(d) *Municipal waste combustion units that combust only tires.* Units are exempt from your State plan if three requirements are met:

(1) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive documentation from the owner or operator that the unit qualifies for the exemption.

(e) *Hazardous waste combustion units.* Units are exempt from your State plan if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* Units are exempt from your State plan if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(g) *Co-fired units.* Units are exempt from your State plan if four requirements are met:

(1) The unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You are notified by the owner or operator that the unit qualifies for the exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* Units are exempt from your State plan if four requirements are met:

(1) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under ''Definitions'' (§ 60.1940).

(2) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from your State plan if two requirements are met:

(1) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) The unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt from your State plan.

(k) *Air curtain incinerators.* If an air curtain incinerator (see § 60.1940 for definition) combusts 100 percent yard waste, then those units must only meet the requirements under ''Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste'' (§§ 60.1910 through 60.1930).

### § 60.1560 Can an affected municipal waste combustion unit reduce its capacity to less than 35 tons per day rather than comply with my State plan?

(a) Yes, an owner or operator of an affected municipal waste combustion unit may choose to reduce, by your final compliance date, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste rather than comply with your State plan. They must submit a final control plan and the notifications of achievement of increments of progress as specified in § 60.1610.

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

### § 60.1565 What subcategories of small municipal waste combustion units must I include in my State plan?

This subpart specifies different requirements for different subcategories of municipal waste combustion units. You must use those same two subcategories in your State plan. Those two subcategories are based on the aggregate capacity of the municipal waste combustion plant as follows:

(a) *Class I units.* Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (*See* the definition of ''municipal waste combustion plant capacity'' in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class II units.* Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. (*See* the definition of ''municipal waste combustion plant capacity'' in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

## Use of Model Rule

### § 60.1570 What is the ''model rule'' in this subpart?

(a) The model rule is the portion of the emission guidelines (§§ 60.1585 through 60.1905) that addresses the regulatory requirements applicable to small municipal waste combustion units. The model rule provides the requirements in a regulation format.

(b) In the model rule, ''you'' means the owner or operator of a small municipal waste combustion unit.

**§ 60.1575 How does the model rule relate to the required elements of my State plan?**

The model rule may be used to satisfy the State plan requirements specified in § 60.1515(a)(4) and (5). Alternative language may be used in your State plan, but only if you can demonstrate that the alternative language is as protective as the model rule.

**§ 60.1580 What are the principal components of the model rule?**

The model rule contains five major components:

(a) Increments of progress toward compliance.

(b) Good combustion practices:

(1) Operator training.

(2) Operator certification.

(3) Operating requirements.

(c) Emission limits.

(d) Monitoring and stack testing.

(e) Recordkeeping and reporting.

## Model Rule—Increments of Progress

**§ 60.1585 What are my requirements for meeting increments of progress and achieving final compliance?**

(a) *Class I units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.

(2) Submit a notification of retrofit contract award.

(3) Initiate onsite construction.

(4) Complete onsite construction.

(5) Achieve final compliance.

(b) *Class II units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.

(2) Achieve final compliance.

**§ 60.1590 When must I complete each increment of progress?**

Table 1 of this subpart specifies compliance dates for each of the increments of progress for Class I and II units. (*See* § 60.1940 for definitions of classes.)

**§ 60.1595 What must I include in the notifications of achievement of my increments of progress?**

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with the increment of progress (§§ 60.1610 through 60.1630).

(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

**§ 60.1600 When must I submit the notifications of achievement of increments of progress?**

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

**§ 60.1605 What if I do not meet an increment of progress?**

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in Table 1 of this subpart for achieving that increment of progress. The notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

**§ 60.1610 How do I comply with the increment of progress for submittal of a control plan?**

For your control plan increment of progress, you must complete two items:

(a) Submit the final control plan, including a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart.

(b) You must maintain an onsite copy of the final control plan.

**§ 60.1615 How do I comply with the increment of progress for awarding contracts?**

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that the increment of progress has been achieved. You do not need to include documents incorporated by reference or the attachments to the contracts.

**§ 60.1620 How do I comply with the increment of progress for initiating onsite construction?**

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

**§ 60.1625 How do I comply with the increment of progress for completing onsite construction?**

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

**§ 60.1630 How do I comply with the increment of progress for achieving final compliance?**

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.

(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

**§ 60.1635 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?**

(a) If you close your municipal waste combustion unit but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.1585.

(b) If you close your municipal waste combustion unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

**§ 60.1640 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?**

(a) If you plan to close your municipal waste combustion unit rather than comply with the State plan, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of State plan approval, you must enter into a legally binding closure agreement with the

Administrator by the date your final control plan is due. The agreement must specify the date by which operation will cease.

## Model Rule—Good Combustion Practices: Operator Training

### § 60.1645 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

### § 60.1650 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) Those employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

### § 60.1655 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

### § 60.1660 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after the effective date of State plan approval.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of State plan approval.

(2) Six months after your municipal waste combustion unit starts up.

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

### § 60.1665 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable requirements in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit in compliance with the requirements contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

### § 60.1670 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

## Model Rule—Good Combustion Practices: Operator Certification

### § 60.1675 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class I units, 12 months after the effective date of State plan approval. For Class II units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994) (incorporated by reference in § 60.17(h)(1)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class I units, 12 months after the effective date of State plan approval. For Class II units, 18 months after the effective date of State plan approval.

(2) Six months after the municipal waste combustion unit starts up.

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

### § 60.1680 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

**§ 60.1685 What if all the certified operators must be temporarily offsite?**

If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under § 60.1885(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

## Model Rule—Good Combustion Practices: Operating Requirements

**§ 60.1690 What are the operating practice requirements for my municipal waste combustion unit?**

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under ''Definitions'' (§ 60.1940).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under ''Definitions'' (§ 60.1940).

(c) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins/furans or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using equation 4 or 5 in § 60.1935(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

**§ 60.1695 What happens to the operating requirements during periods of startup, shutdown, and malfunction?**

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

## Model Rule—Emission Limits

**§ 60.1700 What pollutants are regulated by this subpart?**

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

**§ 60.1705 What emission limits must I meet? By when?**

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the four tables of this subpart:

(1) For Class I units, see Tables 2 and 3 of this subpart.

(2) For Class II units, see Table 4 of this subpart.

(3) For carbon monoxide emission limits for both classes of units, see Table 5 of this subpart.

(b) If your Class I municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxins/furans and mercury emission limits specified in Table 2 of this subpart as applicable by the later of the following two dates:

(1) One year after the effective date of State plan approval.

(2) One year after the issuance of a revised construction or operating

permit, if a permit modification is required. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date 1 year after the issuance of a revised construction or operation permit is later than December 6, 2005.

### § 60.1710 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

(c) A maximum of 3 hours of test data can be dismissed from compliance calculations during periods of startup, shutdown, or malfunction.

(d) During startup, shutdown, or malfunction periods longer than 3 hours, emissions data cannot be discarded from compliance calculations and all provisions under § 60.11(d) apply.

## Model Rule—Continuous Emission Monitoring

### § 60.1715 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

### § 60.1720 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and oxygen (or carbon dioxide) at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 60.1745.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install continuous emission monitoring systems for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

(f) If you prefer to use an alternative sulfur dioxide monitoring method, such as parametric monitoring, or cannot monitor emissions at the inlet of the air pollution control device to determine percent reduction, you can apply to the Administrator for approval to use an alternative monitoring method under § 60.13(i).

### § 60.1725 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in Tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1780.

### § 60.1730 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in Table 6 of this subpart. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

### § 60.1735 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

### § 60.1740 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 13 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

### § 60.1745 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring systems. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3A or 3B in appendix A of this part to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B in appendix A of this part to determine the relationship between oxygen and carbon dioxide.

**§ 60.1750 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is the data collection requirement enforceable?**

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1885(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1755.

**§ 60.1755 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?**

(a) Use the equation in § 60.1935(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19 in appendix A of this part, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19 in appendix A of this part, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19 in appendix A of this part, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

**§ 60.1760 What is required for my continuous opacity monitoring system and how are the data used?**

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete the evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 13 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9 in appendix A of this part, as specified in § 60.1790, to determine compliance with the opacity limit in Table 2 or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the opacity limit.

**§ 60.1765 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?**

Use the required span values and applicable performance specifications in Table 8 of this subpart.

**§ 60.1770 What must I do if any of my continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements?**

Refer to Table 8 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

## Model Rule—Stack Testing

**§ 60.1775 What types of stack tests must I conduct?**

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

**§ 60.1780 How are the stack test data used?**

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in Tables 2 and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1725.

**§ 60.1785 What schedule must I follow for the stack testing?**

(a) Conduct initial stack tests for the pollutants listed in § 60.1775 by 180 days after your final compliance date.

(b) Conduct annual stack tests for the same pollutants after the initial stack test. Conduct each annual stack test no later than 13 months after the previous stack test.

**§ 60.1790 What test methods must I use to stack test?**

(a) Follow Table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all the pollutants consist of at least three test runs, as specified in § 60.8. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in Tables 2 and 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1720.

(d) Use the equations in § 60.1935(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in Table 6 of this subpart for other required equations.

(e) You can apply to the Administrator for approval under § 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Administrator has determined are adequate for demonstrating compliance, waive the requirement for a performance test because you have demonstrated by other means that you are in compliance, or use a shorter sampling time or smaller sampling volume.

**§ 60.1795 May I conduct stack testing less often?**

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In that case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every 3rd year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over 3 consecutive years show compliance with the emission limit for that pollutant. The provision applies to all pollutants subject to stack testing requirements: dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

(b) You can test less often for dioxins/furans emissions if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all those municipal waste combustion units have demonstrated levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for 2 consecutive years. In that case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant. The provision only applies to stack testing for dioxins/furans emissions.

(1) Conduct the stack test no more than 13 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxins/furans emissions less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxins/furans emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxins/furans emissions levels less than or equal to 15 nanograms per dry standard cubic meter (total mass) for Class I units, or 30 nanograms per dry standard cubic meter (total mass) for Class II units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

**§ 60.1800 May I deviate from the 13-month testing schedule if unforeseen circumstances arise?**

You may not deviate from the 13-month testing schedules specified in §§ 60.1785(b) and 60.1795(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

## Model Rule—Other Monitoring Requirements

**§ 60.1805 Must I meet other requirements for continuous monitoring?**

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

**§ 60.1810 How do I monitor the load of my municipal waste combustion unit?**

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms (or pounds) per hour.

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in ''American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991),'' section 4 (incorporated by reference in § 60.17(h)(2)).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in ''American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters,'' 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17(h)(3)).

(5) Before each dioxins/furans stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion units do not generate steam, or, if your municipal waste combustion units have shared steam systems and steam load cannot be estimated per unit, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

**§ 60.1815 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?**

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

**§ 60.1820 How do I monitor the injection rate of activated carbon?**

If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxins/furans and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste

and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

### § 60.1825 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is the data collection requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxins/furans or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of the data collection requirement, and you must notify the Administrator according to § 60.1885(e).

## Model Rule—Recordkeeping

### § 60.1830 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

### § 60.1835 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

### § 60.1840 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for 2 weeks or less, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.

(2) When all certified chief facility operators and certified shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause those people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

### § 60.1845 What records must I keep for stack tests?

For stack tests required under § 60.1775, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in Table 2 or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxins/furans emissions.

(d) The calendar date of each record.

### § 60.1850 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) of this section or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1750 and 60.1825. Record those dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep those records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(h) *Records of calendar dates.* Include the calendar date on each record.

### § 60.1855 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxins/furans or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate in kilograms (or pounds) per hour during all stack tests for dioxins/furans and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxins/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (or pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using equation 4 or 5 in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxins/furans or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1825.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

## Model Rule—Reporting

### § 60.1860 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1870, 60.1880, and 60.1895. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1875, 60.1885, and 60.1900 onsite for 5 years.

### § 60.1865 What are the appropriate units of measurement for reporting my data?

See Tables 2, 3, 4 and 5 of this subpart for appropriate units of measurement.

### § 60.1870 When must I submit the initial report?

As specified in § 60.7(c), submit your initial report by 180 days after your final compliance date.

### § 60.1875 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1850(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily

geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in Table 2 or 4 of this subpart):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxins/furans emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxins/furans or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxins/furans and mercury emissions. Include supporting calculations as specified in § 60.1855(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

### § 60.1880 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the CAA, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

### § 60.1885 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1845(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List those values for five pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base the value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1850(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxins/furans or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxins/furans and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using equation 4 or 5 in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load level of the municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.

(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxins/furans emissions during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year which gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 12 hours.

### § 60.1890 What must I do if I am out of compliance with the requirements of this subpart?

You must submit a semiannual report on any recorded emission or parameter

level that does not meet the requirements specified in this subpart.

**§ 60.1895 If a semiannual report is required, when must I submit it?**

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

**§ 60.1900 What must I include in the semiannual out-of-compliance reports?**

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of your municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(6) Average 6-minute opacity level. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

(b) If the results of your annual stack tests (as recorded in § 60.1845(a)) show emissions above the limits specified in Table 2 or 4 of this subpart as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxins/furans or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxins/furans stack test (as specified in § 60.1855(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

**§ 60.1905 Can reporting dates be changed?**

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) for procedures to seek approval to change your reporting date.

## Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste

**§ 60.1910 What is an air curtain incinerator?**

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

**§ 60.1915 What is yard waste?**

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in § 60.1940.

(b) Clean wood that is exempt from the definition of ''municipal solid waste'' in § 60.1940.

**§ 60.1920 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?**

If your air curtain incinerator combusts 100 percent yard waste, you must only meet the emission limits in this section.

(a) By 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

**§ 60.1925 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?**

(a) Use EPA Reference Method 9 in appendix A of this part to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 13 calendar months following the date of your previous test.

**§ 60.1930 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?**

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1935(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c)).

(h) Keep a copy of all reports onsite for a period of 5 years.

**Equations**

**§ 60.1935 What equations must I use?**

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using equation 1 of this section:

$$C_{7\%} = C_{unc} * (13.9) * \left(1 / \left(20.9 - CO_2\right)\right) \qquad \text{(Eq. 1)}$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

$C_{unc}$ = uncorrected pollutant concentration.

$CO_2$ = concentration of oxygen (percent).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using equation 2 of this section:

$$\%P_{Hg} = \left(E_i - E_o\right) * \left(100 / E_i\right) \qquad \text{(Eq. 2)}$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

$E_i$ = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_o$ = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HC1}$) using equation 3 of this section:

$$\%P_{HCl} = \left(E_i - E_o\right) * \left(100 / E_i\right) \qquad \text{(Eq. 3)}$$

Where:

$\%P_{HC1}$ = percent reduction of the potential hydrogen chloride emissions

$E_i$ = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

$E_o$ = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate continuously for 24-hour periods, calculate the municipal waste combustion unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxins/furans or mercury limits, calculate the required quarterly usage of carbon using equation 4 of this section for plant basis or equation 5 of this section for unit basis:

(1) Plant basis.

$$C = \sum_{i=1}^{n} f_i * h_i \qquad \text{(Eq. 4)}$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

$f_i$ = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

$h_i$ = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h \qquad \text{(Eq. 5)}$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. That is the average carbon feed rate during the most recent mercury or dioxins/furans stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

## Definitions

### § 60.1940 What definitions must I know?

Terms used but not defined in this section are defined in the CAA and in subparts A and B of this part.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

*Air curtain incinerator* means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

*Batch municipal waste combustion unit* means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

*Calendar quarter* means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

*Calendar year* means 365 (or 366 consecutive days in leap years) consecutive days starting on January 1 and ending on December 31.

*Chief facility operator* means the person in direct charge and control of the operation of a municipal waste combustion unit. That person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

*Class I units* mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition in this section of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

*Class II units* mean small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition in this section of ''municipal waste combustion plant capacity'' for specification of which units at a plant site are included in the aggregate capacity calculation.

*Clean wood* means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) ''Yard waste,'' which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of ''municipal solid waste'' in this section.

*Co-fired combustion unit* means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a co-fired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

*Continuous burning* means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

*Continuous emission monitoring system* means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

*Dioxins/furans* mean tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

*Effective date of State plan approval* means the effective date that the EPA approves the State plan. The **Federal Register** specifies the date in the notice that announces EPA's approval of the State plan.

*Eight-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

*Federally enforceable* means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

*First calendar half* means the period that starts on January 1 and ends on June 30 in any year.

*Fluidized bed combustion unit* means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

*Four-hour block average* or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4:00 a.m.

(2) 4:00 a.m. to 8:00 a.m.

(3) 8:00 a.m. to 12:00 noon.

(4) 12:00 noon to 4:00 p.m.

(5) 4:00 p.m. to 8:00 p.m.

(6) 8:00 p.m. to 12:00 midnight.

*Mass burn refractory municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

*Mass burn rotary waterwall municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

*Mass burn waterwall municipal waste combustion unit* means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

*Maximum demonstrated load of a municipal waste combustion unit* means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxins/furans stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

*Maximum demonstrated temperature of the particulate matter control device* means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxins/furans emissions that demonstrates compliance with the limits specified in this subpart.

*Medical/infectious waste* means any waste meeting the definition of ''medical/infectious waste'' in § 60.51c.

*Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit* means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. That includes both conventional pulverized coal and micropulverized coal.

*Modification* or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed after June 6, 2001 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which new source performance standards have been established under section 129 or section 111 of the CAA. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in the determination.

*Modular excess-air municipal waste combustion unit* means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

*Modular starved-air municipal waste combustion unit* means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

*Municipal solid waste* or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

*Municipal waste combustion plant* means one or more municipal waste combustion units at the same location as specified under Applicability of State Plans (§ 60.1550(a)).

*Municipal waste combustion plant capacity* means the aggregate municipal waste combustion capacity of all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of this part.

*Municipal waste combustion unit* means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under Applicability of State Plans (§ 60.1555(h) and (i)). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under Applicability of State Plans (§ 60.1555(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

*Particulate matter* means total particulate matter emitted from municipal waste combustion units as measured using EPA Reference Method 5 in appendix A of this part and the procedures specified in § 60.1790.

*Plastics or rubber recycling unit* means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). The feed materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. The feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

*Potential hydrogen chloride emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

*Potential mercury emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

*Potential sulfur dioxide emissions* means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

*Pyrolysis/combustion unit* means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

*Reconstruction* means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins after June 6, 2001.

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate the costs, see the definition in this section of ''municipal waste combustion unit.''

*Refractory unit* or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

*Refuse-derived fuel* means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

*Same location* means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

*Second calendar half* means the period that starts on July 1 and ends on December 31 in any year.

*Shift supervisor* means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

*Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit* means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

*Standard conditions* when referring to units of measure mean a temperature of 20 °C and a pressure of 101.3 kilopascals.

*Startup period* means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

*State* means any of the 50 United States and the protectorates of the United States.

*State plan* means a plan submitted pursuant to sections 111(d) and 129(b)(2) of the CAA and subpart B of this part, that implements and enforces this subpart.

*Stoker (refuse-derived fuel) combustion unit* means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

*Total mass dioxins/furans* or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 in appendix A of this part and the procedures specified in § 60.1790.

*Twenty-four hour daily average* or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

*Untreated lumber* means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

*Waterwall furnace* means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

*Yard waste* means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of ''municipal solid waste'' in this section.

(2) Clean wood that is exempt from the definition of ''municipal solid waste'' in this section.

## Tables

TABLE 1 OF SUBPART BBBB—MODEL RULE—COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

| Affected units | Increment 1 (Submit final control plan) | Increment 2 (Award contracts) | Increment 3 (Begin onsite construction) | Increment 4 (Complete onsite construction) | Increment 5 (Final compliance) |
|---|---|---|---|---|---|
| 1. All Class I units [a b] | (Dates to be specified in State plan). | (Dates to be specified in State plan). | (Dates to be specified in State plan). | (Dates to be specified in State plan). | (Dates to be specified in State plan) [c d]. |
| 2. All Class II units [a e] | (Dates to be specified in State plan). | Not applicable ..... | Not applicable ..... | Not applicable ..... | (Dates to be specified in State plan) [c]. |

[a] Plant specific schedules can be used at the discretion of the State.

[b] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

[c] The date can be no later than 3 years after the effective date of State plan approval or December 6, 2005.

[d] For Class I units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxins/furans and mercury limits by the later of two dates:

1. One year after the effective date of State plan approval.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required.
3. Final compliance with the dioxins/furans limits must be achieved no later than December 6, 2005, even if the date one year after the issuance of a revised construction or operation permit is after December 6, 2005.

[e] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

TABLE 2 OF SUBPART BBBB—MODEL RULE—CLASS I EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS [a]

| For the following pollutants | You must meet the following emission limits [b] | Using the following averaging times | And determine compliance by the following methods |
|---|---|---|---|
| 1. Organics: | | | |
| Dioxins/Furans (total mass basis). | 30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or-.<br>60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system. | 3-run average (minimum run duration is 4 hours). | Stack test. |
| 2. Metals: | | | |
| Cadmium | 0.040 milligrams per dry standard cubic meter | 3-run average (run duration specified in test method). | Stack test. |
| Lead | 0.490 milligrams per dry standard cubic meter | 3-run average (run duration specified in test method). | Stack test. |
| Mercury | 0.080 milligrams per dry standard cubic meter<br>85 percent reduction of potential mercury emissions. | 3-run average (run duration specified in test method). | Stack test. |
| Opacity | 10 percent | Thirty 6-minute averages | Stack test. |
| Particulate Matter | 27 milligrams per dry standard cubic meter | 3-run average (run duration specified in test method). | Stack test. |
| 3. Acid Gases: | | | |
| Hydrogen Chloride | 31 parts per million by dry volume 95 percent reduction of potential hydrogen chloride emissions. | 3-run average (minimum run duration is 1 hour). | Stack test. |
| Sulfur Dioxide | 31 parts per million by dry volume 75 percent reduction of potential sulfur dioxide emissions. | 24-hour daily block geometric average concentration percent reduction. | Continuous emission monitoring system. |
| 4. Other: | | | |
| Fugitive Ash | Visible emissions for no more than 5 percent of hourly observation period. | Three 1-hour observation periods. | Visible emission test. |

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

[b] All emission limits (except for opacity) are measured at 7 percent oxygen.

TABLE 3 OF SUBPART BBBB—MODEL RULE—CLASS I NITROGEN OXIDES EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS [a,b,c]

| Municipal waste combustion technology | Limits for class I municipal waste combustion units |
|---|---|
| 1. Mass burn waterwall | 200 parts per million by dry volume. |
| 2. Mass burn rotary waterwall | 170 parts per million by dry volume. |
| 3. Refuse-derived fuel | 250 parts per million by dry volume. |
| 4. Fluidized bed | 220 parts per million by dry volume. |
| 5. Mass burn refractory | 350 parts per million by dry volume. |
| 6. Modular excess air | 190 parts per million by dry volume. |
| 7. Modular starved air | 380 parts per million by dry volume. |

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

[b] Nitrogen oxides limits are measured at 7 percent oxygen.

[c] All limits are 24-hour daily block arithmetic average concentration. Compliance is determined for Class I units by continuous emission monitoring systems.

TABLE 4 OF SUBPART BBBB—MODEL RULE—CLASS II EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNIT[a]

| For the following pollutants | You must meet the following emission following determine limits[b] | Using the following averaging times | And determine compliance by the following methods |
|---|---|---|---|
| 1. Organics: | | | |
| Dioxins/Furans (total mass basis) | 125 nanorgrams per dry standard cubic meter. | 3-run average (minimum run duration is 4 hours). | Stack test. |
| 2. Metals: | | | |
| Cadmium | 0.10 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| Lead | 1.6 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| Mercury | 0.080 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| | 85 percent reduction of potential mercury emissions. | | |
| Opacity | 10 percent | Thirty 6-minute average | Stack test. |
| Particulate Matter | 70 milligrams per dry standard cubic meter. | 3-run average (run duration specified in test method). | Stack test. |
| 3. Acid Gases: | | | |
| Hydrogen Chloride | 250 parts per million by volume -or-. | 3-run average (minimum run duration is 1 hour). | Stack test. |
| | 50 percent reduction of potential hydrogen chloride emissions. | | |
| Sulfur Dioxide | 77 parts per million by dry volume -or-. | 24-hour daily block geometric average concentration -or- percent reduction. | Continuous emission monitoring system. |
| | 50 percent reduction of potential sulfur dioxides emissions. | | |
| 4. Other: | | | |
| Fugitive Ash | Visible emissions for no more than 5 percent of hourly observation period. | Three 1-hour observation periods. | Visible emission test. |

[a] Class II units mean all small municipal combustion units subject to this subpart that are located at municipal waste combustion plants with aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See § 60.1940 for definitions.
[b] All emission limits (except for opacity) are measured at 7 percent oxygen.
[c] No monitoring, testing, recordkeeping or reporting is required to demonstrate compliance with the nitrogen oxides limit for Class II units.

TABLE 5 OF SUBPART BBBB—MODEL RULE—CARBON MONOXIDE EMISSION LIMITS FOR EXISTING SMALL MUNICIPAL WASTE COMBUSTION UNITS

| For the following municipal waste combustion units | You must meet the following carbon monoxide limits[a] | Using the following averaging times[b] |
|---|---|---|
| 1. Fluidized bed | 100 parts per million by dry volume | 4-hour. |
| 2. Fluidized bed, mixed fuel, (wood/refuse-derived fuel) | 200 parts per million by dry volume | 24-hour[c]. |
| 3. Mass burn rotary refractory | 100 parts per million by dry volume | 4-hour. |
| 4. Mass burn rotary waterwall | 250 parts per million by dry volume | 24-hour. |
| 5. Mass burn waterwall and refractory | 100 parts per million by dry volume | 4-hour. |
| 6. Mixed fuel-fired, (pulverized coal/refuse-derived fuel) | 150 parts per million by dry volume | 4-hour. |
| 7. Modular starved-air and excess air | 50 parts per million by dry volume | 4-hour. |
| 8. Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel). | 200 parts per million by dry volume | 24-hour daily. |
| 9. Stoker, refuse-derived fuel | 200 parts per million by dry volume | 24-hour daily. |

[a] All emission limits (except for opacity) are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.
[b] Block averages, arithmetic mean. See § 60.1940 for definitions.
[c] 24-hour block average, geometric mean.

TABLE 6 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR VALIDATING CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

| For the following continuous emission monitoring systems | Use the following methods in appendix A of this part to validate poollutant concentratin levels | Use the following methods in appendix A of this part to measure oxygen (or carbon dioxide) |
|---|---|---|
| 1. Nitrogen Oxides (Class I units only)[a] | Method 7, 7A, 7B,7C, 7D, or 7E | Method 3 or 3A. |
| 2. Sulfur Dioxide | Method 6 or 6C | Method 3 or 3A. |
| 3. Carbon Monoxide | Method 10, 10A, or 10B | Method 3 or 3A. |

[a] Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See § 60.1940 for definitions.

TABLE 7 OF SUBPART BBBB—''MODEL RULE—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

| For the following pollutants | Use the following span values for CEMS | Use the following performance specifications in appendix B of this part for your CEMS | If needed to meet minimum data requirements, use the folloiwng alternate methods in appendix A of this part to collect data |
|---|---|---|---|
| 1. Opacity | 100 percent opacity | P.S. 1 | Method 9. |
| 2. Nitrogen Oxides (Class I units only). | Control device outlet: 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit. | P.S. 2 | Method 7E. |
| 3. Sulfur Dioxide | Inlet to control device: 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit.<br>Control device outlet: 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit. | P.S. 2 | Method 6C. |
| 4. Carbon Monoxide | 125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit. | P.S. 4A | Method 10 with alternative interference trap. |
| 5. Oxygen or Carbon Dioxide. | 25 percent oxygen or 25 percent carbon dioxide | P.S. 3 | Method 3A or 3B. |

TABLE 8 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR STACK TESTS

| To measure the following pollutants | Use the following methods in appendix A of this part to determine the sampling location | Use the following methods in appendix A of this part to measure pollutant concentration | Also note the following additional information |
|---|---|---|---|
| 1. Organics | | | |
| Dioxins/Furans | Method 1 | Method 23[a] | The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load. |
| 2. Metals | | | |
| Cadmium | Method 1 | Method 29[a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |
| Lead | Method 1 | Method 29[a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |
| Mercury | Method 1 | Method 29[a] | Compliance testing must be performed while the municipal waste combustion unit is operating at full load. |
| Opacity | Method 9 | Method 9 | Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages). |
| Particulate Matter | Method 1 | Method 5 or 29 | The minimum sample volume must be 1.0 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14 °C. The minimum sampling time is 1 hour. |
| 3. Acid Gases[b] | | | |
| Hydrogen Chloride | Method 1 | Method 26 or 26A[a] | Test runs must be at least 1 hour long while the municipal waste combustion unit is operating at full load. |
| 4. Other[b] | | | |

TABLE 8 OF SUBPART BBBB—MODEL RULE—REQUIREMENTS FOR STACK TESTS—Continued

| To measure the following pollutants | Use the following methods in appendix A of this part to determine the sampling location | Use the following methods in appendix A of this part to measure pollutant concentration | Also note the following additional information |
|---|---|---|---|
| Fugitive Ash | Not applicable | Method 22 (visible emissions). | The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks. |

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3A or 3B in appendix A of this part.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for quality assurance requirements in Appendix F of this part.

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December 6, 2000

# Part IV

# Environmental Protection Agency

## 40 CFR Part 63

## National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–6899–9]**

**RIN 2060–AH68**

## National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** This action proposes amendments to the ''generic'' maximum achievable control technology (MACT) standards to add national emission standards for hazardous air pollutants (NESHAP) for four additional source categories: Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production. The generic MACT standards provide a structural framework allowing source categories with similar emission types and MACT control requirements to be covered under one subpart, thus promoting regulatory consistency in NESHAP development. The EPA has identified these four source categories as major sources of hazardous air pollutants (HAP), including cyanide compounds, acrylonitrile, acetonitrile, carbonyl sulfide, carbon disulfide, benzene, 1,3 butadiene, toluene, and 2,4 toluene diisocyanate (TDI). Benzene is a known human carcinogen, and 1,3 butadiene is considered to be a probable human carcinogen. The other pollutants can cause noncancer health effects in humans. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of MACT.

**DATES:** *Comments.* Submit comments on or before February 5, 2001.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by December 26, 2000, a public hearing will be held on January 5, 2001.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–17, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. All technical comments pertaining solely to individual source categories should be submitted to the dockets established for the individual source categories (see *Docket* for individual docket numbers). The EPA requests a separate copy also be sent to Mr. Mark Morris (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10:00 a.m.

*Docket.* Docket No. A–97–17 contains supporting information used in developing the generic MACT standards. Dockets established for each of the source categories proposed to be assimilated under the generic MACT standards with this proposal include: Cyanide Chemicals Manufacturing (Docket No. A–2000–14), Carbon Black Production (Docket No. A–98–10), Ethylene Production (Docket No. A–98–22), and Spandex Production (Docket No. A–98–25). These dockets include source category-specific supporting information. All dockets are located at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street SW, Washington, DC 20460, 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 the proposed NESHAP, contact the following at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711:

| Information type | Contact | Group | Phone/facsimile/e-mail address |
|---|---|---|---|
| General | Mark Morris | Organic Chemicals Group | (919) 541–5416/(919) 541–3470/ morris.mark @epa.gov. |
| Cyanide chemicals manufacturing | Keith Barnett | Organic Chemicals Group | (919) 541–5605/(919) 541–3470/ barnett.keith @epa.gov. |
| Carbon black production | John Schaefer | Organic Chemicals Group | (919) 541–0296/(919) 541–3470/ schaefer.john @epa.gov. |
| Ethylene production | Warren Johnson | Organic Chemicals Group | (919) 541–5267/(919) 541–3470/ johnson.warren @epa.gov. |
| Spandex production | Elaine Manning | Waste and Chemical Processes Group. | (919) 541–5499/(919) 541–3470/ manning.elaine @epa.gov. |
| Public hearing | Maria Noell | Organic Chemicals Group | (919) 541–5607/(919) 541–3470/ noell.maria @epa.gov. |

**SUPLLEMENTARY INFORMATION:**

### Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the appropriate docket number (see **ADDRESSES**). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mark Morris, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

### Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell (see **FOR FURTHER INFORMATION CONTACT**) at least 2 days in advance of the public hearing. Persons

interested in attending the public hearing must also call Ms. Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

**Docket**

The docket is an organized and complete file of the record compiled 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 CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

**World Wide Web (WWW)**

In addition to being available in the docket, an electronic copy of this proposed rule is also 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**

Categories and entities potentially regulated by this action include:

| Category | NAICS code | SIC code | Examples of regulated entities |
|---|---|---|---|
| Industrial | 325188, 325199 | 2819, 2869 | Producers and coproducers of hydrogen cyanide and sodium cyanide. |
| | 325182 | 2895 | Producers of carbon black by thermal-oxidative decomposition in a closed system, thermal decomposition in a cyclic process, or thermal decomposition in a continuous process. |
| | 325110 | 2869 | Producers of ethylene from refined petroleum or liquid hydrocarbons. |
| | 325222 | 2824 | Producers of spandex by reaction spinning. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1104 of the proposed subpart. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Outline**

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. Why is the EPA proposing to include today's standards in the generic MACT standards?
D. What are the proposed amendments to subpart YY and the subparts referenced by it?
II. Cyanide Chemicals Manufacturing
A. Introduction
B. Summary of Proposed Standards for Cyanide Chemicals Manufacturing
C. Rationale for Selecting the Proposed Standards for Cyanide Chemicals Manufacturing
D. Summary of Environmental, Energy, Cost, and Economic Impacts
III. Carbon Black Production
A. Introduction
B. Summary of Proposed Standards for Carbon Black Production
C. Rationale for Selecting the Proposed Standards for Carbon Black Production
D. Summary of Environmental, Energy, Cost, and Economic Impacts
E. Solicitation of Comments
IV. Ethylene Production
A. Introduction
B. Summary of Proposed Standards for Ethylene Production
C. Rationale for Selecting the Proposed Standards for Ethylene Production
D. Summary of Environmental, Energy, Cost, and Economic Impacts
E. Solicitation of Comments
V. Spandex Production
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VI. Administrative Requirements
A. Executive Order 12866, Regulator Planning and Review
B. Paperwork Reduction Act
C. Executive Order 13132, Federalism
D. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act of 1995
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
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. National Technology Transfer and Advancement Act
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

## I. Background

### *A. What is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The categories of major sources covered by today's proposed NESHAP were listed on the following dates: Cyanide Chemicals Manufacturing, July 16, 1992 (57 FR 31576); Carbon Black Production, June 4, 1996 (61 FR 28197); Ethylene Production, June 4, 1996 (61 FR 28197); and Spandex Production,

July 16, 1992 (57 FR 31576). A major source of HAP is defined as any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 9.1 megagrams per year (Mg/yr) (10 tons per year (TPY)) or more of any single HAP or 22.7 Mg/yr or more (25 TPY) of multiple HAP.

*B. What Criteria Are Used in the Development of NESHAP?*

Section 112 of the CAA requires us to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, NESHAP cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The NESHAP for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, nonair quality health and environmental impacts, and energy requirements.

*C. Why is the EPA Proposing to Include Today's Standards in the Generic MACT Standards?*

We are proposing NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories under the generic MACT standards to reduce the regulatory burden associated with the development of separate rulemakings. An owner or operator should consult the generic MACT standards for information on applicability of the standards to their source, compliance schedules, and standards. The generic MACT standards generally refer the owner or operator to other subparts for requirements necessary to demonstrate compliance.

We are proposing to include the NESHAP for the Cyanide Chemicals Manufacturing, Carbon Black Production, Ethylene Production, and Spandex Production source categories in the generic MACT standards to simplify the rulemaking process, to minimize the potential for duplicative or conflicting requirements, to conserve limited resources, and to ensure consistency of the air emissions requirements applied to similar emission points. We believe that the generic MACT regulatory framework is appropriate for these source categories because it allows us to incorporate specific applicability and control requirements that reflect our decisions on these source categories while also utilizing generic requirements previously established for similar emission sources that we have determined are also applicable here.

Section 112(d) of the CAA requires that emission standards for control of HAP be prescribed unless, in our judgement, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions are: (1) If the HAP cannot be emitted through a conveyance device, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then we may instead promulgate equipment, work practice, design, or operational standards, or a combination of them.

Common formats for emission standards include a percent reduction, concentration limit, or mass emission limit. In some instances, adoption of an emission standard may be feasible for certain sources within a category or subcategory and not for other sources within the same category or subcategory. In such cases, we may adopt both an emission standard and an alternative equipment, design, work practice, or operational standard, but only one type of standard will apply to a given source depending on the nature and configuration of that source.

Because today's proposed standards reference several other subparts to control emissions, the format of the standards (*i.e.*, emission standard or work practice) for each emission type is that of the subparts which are referenced. We developed the formats of the standards proposed today based on the development of the formats for the existing generic standards.

*D. What Are the Proposed Amendments to Subpart YY and the Subparts Referenced By It?*

We are proposing to add sections to subpart YY and the subparts referenced by it that specify who has the authority to implement and enforce the subparts. These sections specify the authorities that will be retained by the EPA Administrator and the authorities that may be delegated to a State, local, or tribal agency. These proposed sections do not affect the stringency of the standards, nor would they increase the burden on a State, local, or tribal agency.

The proposed amendments clarify appropriate methods for demonstrating compliance with percent reduction requirements and emission concentration limits on combustion devices. The proposed amendments allow owners and operators to use either Method 25, 25A (under certain specific conditions), or 18 to demonstrate compliance with the HAP percent emission reduction requirement. However, if Method 18 is used, we clarify that only HAP that are present in the inlet to the device can be used to characterize the percent reduction across the device. Additionally, you must first determine which HAP are present in the inlet gas stream (*i.e.*, uncontrolled emissions) using process knowledge or a screening procedure. When using Method 25 or 25A, you must measure the inlet and outlet mass emissions as carbon.

We provided this clarification because when organic compounds are controlled by combustion processes, the organic pollutants emitted at the outlet of the device are not the same as those entering the inlet to the device and are typically unknown. Method 18, which measures specific, known compounds, will not yield accurate results unless it can be used to determine the percent reduction of known compounds across the device. Conversely, Method 25 measures total non-methane organic compounds and can be used to determine percent reduction across the combustion device regardless of how the combustion process affects the inlet and outlet streams. Under certain conditions (*i.e.*, controlled emissions concentrations less than 50 parts per million by volume (ppmv)), Method 25A may be used in lieu of Method 25 for determining the reduction across a combustion device.

In demonstrating compliance with the outlet concentration standard, you may use Method 18 or Method 25A. If

Method 18 is used, the resulting concentration must be reported as the compound or compounds measured; however, if Method 25A is used, the concentration must be reported as carbon.

## II. Cyanide Chemicals Manufacturing

### *A. Introduction*

#### 1. What Are the Primary Sources of Emissions and What Are the Emissions?

We have identified the following HAP emission sources at cyanide chemicals manufacturing facilities: (1) Process vents, (2) storage vessels, (3) equipment leaks, (4) transfer operations, and (5) wastewater treatment operations. We estimate that HAP emissions from process vents and equipment leaks account for more than 96 percent of the total HAP emissions from the source category.

We estimate nationwide HAP emissions from the cyanide chemicals manufacturing industry to be 239 Mg/yr (263 TPY). The predominant HAP emitted from this source category include cyanide compounds (hydrogen cyanide (HCN) and sodium cyanide), acrylonitrile, and acetonitrile.

#### 2. What Are the Health Effects Associated With the HAP Emitted?

In the following paragraphs, we present a discussion of the effects of inhalation exposure to cyanide compounds, acrylonitrile, and acetonitrile.

*Cyanide Compounds.* Acute inhalation exposure to high concentrations of cyanide compounds can be rapidly lethal. Acute inhalation of HCN at lower concentrations can cause a variety of adverse health effects in humans, such as weakness, headache, nausea, increased rate of respiration, and eye and skin irritation. Chronic inhalation exposure to cyanide compounds can result in effects on the central nervous system, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. Other chronic exposure effects in humans include cardiovascular and respiratory effects, an enlarged thyroid gland, and irritation to the eyes and skin.

*Acrylonitrile.* Acute inhalation exposure of workers to acrylonitrile has been associated with the occurrence of low-grade anemia, cyanosis, leukocytosis, kidney irritation, mild jaundice, and labored breathing. Symptoms include mucous membrane irritation, headaches, dizziness, nausea, apprehension and nervous irritability, muscle weakness, and convulsions.

Chronic inhalation exposure of workers to acrylonitrile has been associated with headaches, nausea, and weakness. There are also several studies that indicate a statistically significant increase in the incidence of lung cancer of workers with chronic inhalation exposure to acrylonitrile.

*Acetonitrile.* Acute inhalation exposure of humans to acetonitrile in concentrations up to 500 ppmv can cause irritation of mucous membranes, and higher concentrations have been associated with weakness, nausea, convulsions and death. Chronic inhalation exposure to acetonitrile results in cyanide poisoning from metabolic release of cyanide after absorption. The major effects associated with cyanide poisoning consist of headaches, numbness, and tremors.

### *B. Summary of Proposed Standards for Cyanide Chemicals Manufacturing*

#### 1. What Is the Source Category To Be Regulated?

The Cyanide Chemicals Manufacturing source category includes facilities that are engaged in the manufacture of HCN or sodium cyanide: (1) By reaction of methane and ammonia over a catalyst (the Blausaure Methane Anlage (BMA) process), (2) by reaction of methane and ammonia in the presence of oxygen over a catalyst (the Andrussow process), or (3) as a by-product of the acrylonitrile production process (the Sohio production process). The source category also includes facilities that manufacture sodium cyanide via the neutralization process, sometimes referred to as the ''wet process,'' in which HCN reacts with sodium hydroxide solution, usually in a system that includes the evaporation of water and crystallization of the product.

#### 2. What Is the Affected Source?

For the Cyanide Chemicals Manufacturing source category, the affected source includes each cyanide chemicals manufacturing process unit, along with associated wastewater streams and equipment, that is located at a major source. A cyanide chemicals manufacturing process unit is the equipment assembled and connected by hard-piping or duct work that processes raw materials to manufacture, store, and transport a cyanide chemicals product. The proposed definition of ''cyanide chemicals manufacturing process unit'' also contains a list of equipment that is part of the process unit. This list includes reactors and associated unit operations; associated recovery devices; feed, intermediate, and product storage vessels; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices.

We have identified four distinct processes used to produce cyanide chemicals. Therefore, the definition of affected source for cyanide chemicals manufacturing specifies that a cyanide chemicals manufacturing process unit may be any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio HCN process unit. The definitions of each of these types of process units describes the process and delineates where the process unit begins and ends.

The Andrussow and BMA process units begin with (and include) the raw material storage tanks and end at the point at which refined HCN enters a reactor in a downstream process or is shipped offsite.

A Sohio HCN process unit, in which HCN is produced as a byproduct of acrylonitrile, begins at the point where the HCN leaves the unit operation where the HCN is separated from acrylonitrile. This unit operation is often referred to as the ''light ends column.'' As with all the other HCN process units, the Sohio HCN process unit ends at the point at which refined HCN enters a reactor in a downstream process or is shipped offsite.

The sodium cyanide process unit begins just prior to the unit operation where refined HCN is reacted with sodium hydroxide and ends at the point just prior to where the solid sodium cyanide product is shipped offsite or enters a reactor in a downstream process.

#### 3. What Are the Emission Limits, Operating Limits, and Other Standards?

We are proposing NESHAP that would regulate HAP emissions from process vents from continuous unit operations, storage vessels storing HCN product, transfer operations, wastewater, and equipment leaks (from compressors, agitators, pressure relief devices, pumps, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems). We are proposing the same requirements for existing and new sources, except for wastewater. The following are summaries of the proposed requirements for each type of emission point.

a. *Process Vents from Continuous Unit Operations.* For process vents from continuous unit operations, we are proposing different standards for each of the four types of cyanide chemicals manufacturing process units. For each

process unit type, we are proposing that overall HAP emissions from the process vents within the process unit be reduced by a specified amount. The required emissions reductions would depend on the type of process unit. The owner or operator would have the option of controlling some vents and not others; or controlling all vents to different levels, as long as the overall process unit process vent HAP emissions standard is achieved. We are also proposing that owners or operators may comply by reducing emissions of HAP from each individual process vent to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). The proposed emissions reductions requirements are summarized below by type of cyanide chemicals manufacturing process.

*Andrussow and BMA HCN production process unit.* Except during periods of startup, shutdown and malfunction, we are proposing that HAP emissions from process vents from Andrussow and BMA HCN production process units be reduced by 99 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

During periods of startup, shutdown or malfunction, we are proposing that process vent HAP emissions be vented through a closed vent system to a flare, or reduced from each process vent by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

*Sohio HCN production process unit.* For process vents from Sohio HCN production process units, we are proposing that overall process vent HCN emissions from the process unit be reduced by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or by venting emissions to a flare.

*Sodium cyanide production process units (wet-end and dry-end process vents).* In the proposed rule, we define wet-end process vents as process vents that originate from the reactor, crystallizer, or any other unit operation in the wet end of the sodium cyanide process unit; and we define dry-end process vents as process vents originating from the drum filter or any other unit operation in the dry end of a sodium cyanide manufacturing process unit. We are proposing that overall HAP emissions from wet-end process vents be reduced by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or by venting emissions to a flare. We are proposing requirements that overall HAP emissions from dry-end process vents be reduced by 98 weight-percent.

b. *Storage Vessels.* We are proposing that HAP emissions from storage vessels that contain HCN be vented through a closed vent system to a flare or any combination of control devices that reduces HAP emissions by 98 weight-percent.

c. *Transfer Operations.* We are proposing requirements to control emissions for each transfer rack that is used to load HCN into tank trucks or rail cars by venting emissions through a closed vent system to a flare or any combination of control devices that reduces emissions of HCN by 98 weight-percent.

d. *Equipment Leaks.* We are proposing requirements to control HCN emissions through the implementation of a leak detection and repair (LDAR) program for equipment that contains or contacts HCN and operates 300 hours or more per year.

We are proposing that an owner or operator may comply with the rule by complying with either 40 CFR part 63, subpart TT, National Emission Standards for Equipment Leaks—Control Level 1; or 40 CFR part 63, subpart UU, National Emission Standards for Equipment Leaks—Control Level 2. The provisions of these subparts control emissions from equipment leaks by work practices (*e.g.,* inspection for leaks, instrument monitoring) and equipment specifications. Both of these subparts require that you inspect equipment for leaks and repair detected leaks.

e. *Wastewater.* We are proposing control requirements for HAP emissions from process wastewater streams at new facilities where the process water contains HAP that are discarded from a cyanide chemicals manufacturing process unit. We are proposing that the HAP emissions from the process wastewater must be suppressed while the wastewater is being conveyed to a treatment device, and we are specifying requirements for the controls to reduce the HCN and acetonitrile concentration in the process wastewater. We are proposing that the treatment device achieve 95 percent removal of HAP, and that vents on the treatment device be controlled to reduce HAP emissions by 98 percent.

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission point sources similar to those for which standards are being proposed today. For example, we are proposing control applicability determination procedures, performance tests, and test methods to determine whether a process vent stream is required to apply control devices and to demonstrate that the allowed emission levels are achieved when controls are applied. The proposed requirements are dependent on the control device selected.

We are proposing control applicability determination procedures to measure process vent flow rate and process vent HAP concentration measurement. The proposed test methods parallel what we have used for process vent organic HAP emission point sources in previous standards (*e.g.,* the Hazardous Organic NESHAP (HON)). For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream HAP concentration to determine whether it is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all control devices other than flares and certain boilers and process heaters used as control devices for HAP emissions from process vents. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) (150 million British thermal units per hour (Btu/hr)) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of organic HAP emissions are reduced, or an outlet concentration of 20 ppmv organic HAP is achieved. For flares, a percent reduction or outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary if the control device is a boiler, a process heater larger than 44 MW (150 million Btu/hr), or a flare. For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that

the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The proposed requirements for cyanide chemicals manufacturing list the parameters that can be monitored for combustion devices. For other control devices, we require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and operating permit. Parameters selected are required to be good indicators of continuous control device performance.

In addition to testing and monitoring of emissions control equipment, we are also proposing that the closed vent system that routes emissions to control equipment be initially and annually tested for HAP emission leaks (*i.e.,* measurement greater than 500 ppmv). If a leak is detected, we would require that you eliminate the leak and monitor equipment (no later than 15 calendar days after the leak is detected).

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements in accordance with the General Provisions (40 CFR part 63, subpart A) and other previously promulgated NESHAP for similar source categories.

We are proposing that owners or operators of cyanide chemicals manufacturing affected sources submit the following four types of reports: (1) Initial Notification, (2) Notification of Compliance Status, (3) periodic reports, and (4) other reports. Records of reported information and other information necessary to document compliance with the standards would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification, we are proposing that you list the cyanide chemicals manufacturing processes at your facility, and which provisions may apply. The Initial Notification must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification within 1 year after the date of promulgation for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (*e.g.,* process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

For periodic reports, we are proposing that you report periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status report. For process vents, records of continuously monitored parameters must be kept. For some emission source types, such as storage vessels, equipment (*e.g.,* valves, pumps), and certain control devices (*e.g.,* flares), periodic inspections or measurements are required instead of continuous monitoring. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is problem. For example, for equipment associated with a cyanide chemicals manufacturing process unit, inspections and/or leak detection monitoring records must be kept. However, the results of such monitoring must be submitted in the periodic report only if a leak is detected. We are proposing that the owner or operator submit these reports semiannually, unless monitored parameter values for a particular emission point are outside the established range greater than a specified percentage of the operating time, or if a problem is found during periodic inspections or measurements, whereby quarterly reporting is required.

Other proposed reporting requirements include reports to notify the regulatory authority before or after a specific event (*e.g.,* if a process change is made, requests for extension of repair period).

*C. Rationale for Selecting the Proposed Standards for Cyanide Chemicals Manufacturing*

1. How Did EPA Select the Source Category?

On February 12, 1998 (63 FR 7155), we combined the HCN production and sodium cyanide production source categories into a new major source category called Cyanide Chemicals Manufacturing. Some facilities produce sodium cyanide and HCN in the same process train (i.e., using the same or linked equipment); therefore, we decided to combine these two source categories because it makes more sense to have facilities subject to one rule rather than two separate rules for different parts of their process.

The Cyanide Chemicals Manufacturing source category includes facilities that manufacture HCN using any of the following methods: The BMA production process, the Andrussow production process, and as a byproduct of the Sohio HCN production process. The source category also includes facilities that manufacture sodium cyanide via the neutralization process (or the ''wet process''). We defined the source category to include these specific production processes because these are the only processes we identified that manufacture HCN and sodium cyanide in the United States.

Section 112(d)(1) of the CAA gives us the authority to ''* * * distinguish among classes, types, and sizes of sources within a category * * *'' when developing standards. Subcategories, or subsets of similar emission sources within a source category, may be defined if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31576). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission controls, emissions sources, and any other factors that would impact a MACT standard.

We did not identify differences in the four cyanide chemicals manufacturing processes (the Andrussow process, the BMA process, the Sohio HCN production process, and the sodium cyanide process) included in the source category that we believe meet the criteria presented above for subcategorization. All four processes emit cyanide chemicals (HCN and sodium cyanide), acetonitrile, and/or acrylonitrile. In addition, facilities using each process type commonly utilize some form of combustion to reduce HAP emissions from point sources. Furthermore, the type of cyanide chemicals manufacturing process does not affect the ability of a facility to reduce fugitive HAP emissions. Therefore, because these processes have similar emissions characteristics, control device applicability, and opportunities for pollution prevention, we determined that it was not necessary to divide this source category into subcategories.

2. How Did EPA Select the Affected Source?

The affected source is the group of unit operations, equipment, and emission points that are subject to the proposed NESHAP. The affected source can be defined as narrowly as a single item of equipment or as broadly as all equipment at the plant site that is used to manufacture the product that defines the source category. A major factor that we considered in selecting the affected source for the Cyanide Chemicals Manufacturing source category was the relationship between the affected source definition and the format of the standards.

The format of the standards for process vents is a process-unit-wide emission limit (*i.e.,* specified percent emissions reductions from all process vents in the process unit). This provides an owner or operator the option of selecting the most cost-effective level of control for each individual process vent, as long as the overall emissions limit is achieved. To accommodate this format, it was necessary to define the affected source to include all process vents in a process unit.

The affected source also defines the collection of equipment that you would evaluate to determine whether replacement of components at an existing affected source would qualify as reconstruction. If we define the affected source narrowly, it could affect whether some parts of a process unit would be subject to new source or existing source requirements. Since we are proposing the same requirements for existing and new sources for cyanide chemicals manufacturing emission points, the only implication for narrowly defining the cyanide chemicals manufacturing affected source would be when the source would have to comply with the standards.

We are proposing the process unit that manufactures cyanide chemicals as the foundation for the affected source. We are proposing a definition of the cyanide chemicals manufacturing process unit as a collection of equipment, assembled and connected by hard-piping or duct work, that is used to process raw materials to manufacture, store, and transport a cyanide chemicals product.

Of the five types of emission points at facilities that manufacture cyanide chemicals (process vents, storage vessels, equipment leaks, transfer operations, and wastewater), all except wastewater are typically located within a cyanide chemicals production process unit. Wastewater that is generated within a process unit is often routed outside the unit for treatment and discharge. In addition, some equipment (*i.e.,* pumps, valves, compressors, etc.) that is used to transport chemicals may be located outside of the cyanide chemicals manufacturing process unit. Therefore, we have proposed a definition of the affected source to include each cyanide chemicals manufacturing process unit and all associated waste management units, maintenance wastewater, and equipment in HAP service.

Cyanide chemicals production process units are seldom ''stand-alone'' facilities. Rather, the production of cyanide chemicals is usually part of an integrated facility. Therefore, the point at which a cyanide chemicals manufacturing process unit begins and ends is not always obvious. Because of this, it is necessary to define the boundaries of the affected source.

As discussed previously, four distinct processes are included in the source category. The proposed rule specifies that a cyanide chemicals manufacturing process unit can be either an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio HCN production process unit. The boundaries of the affected source are described in the definitions of the individual types of process units. We determined that a common demarcation of the end point of the affected source is appropriate for all four process types, but the beginning point needs to be defined separately for each type of process unit.

Cyanide chemicals product is either loaded into a tank truck or railcar, or is used as a raw material in another process at the plant site or an adjacent plant site. Other production processes for which HCN may be used as a raw material include processes that produce acetone cyanohydrin (an intermediate of the methyl methacrylate production process), adiponitrile, chelating agents, or cyanuric chloride. We considered including downstream production process HCN emission points under the cyanide chemicals affected source. However, we determined that production processes where HCN is used as a raw material are covered, or will be covered, by other 40 CFR part 63 subparts. For example, chelating agents production will be covered by the Miscellaneous Organic Chemical Manufacturing NESHAP, scheduled for proposal in the summer of 2000. Cyanuric chloride is an intermediate product and will be covered by either the Pesticide Active Ingredients NESHAP (40 CFR part 63, subpart MMM) or the Miscellaneous Organic Chemical Manufacturing NESHAP. Acetone cyanohydrin and adiponitrile production are subject to the HON (40 CFR part 63, subpart F).

Therefore, we determined that the affected source should end at the point that the cyanide chemicals product is either shipped offsite or is used as a raw material in a downstream process. This means that piping and associated equipment (pumps, valves, etc.) up to the point where the cyanide chemicals are used in the downstream process (*i.e.,* at the reactor) would be included in the cyanide chemicals affected source. We believe that this is necessary to ensure that potential HAP emissions from this equipment are covered by a 40 CFR part 63 subpart.

As noted above, we believe that the starting point of the affected source needs to be defined for each type of process. The Andrussow and BMA processes are straightforward because raw materials are reacted to produce HCN. Therefore, for these two processes, we defined the beginning of the affected source as the point at which raw materials are stored.

In the Sohio HCN production process, the primary product produced is acrylonitrile, and HCN is manufactured as a byproduct. The acrylonitrile production process is covered under the HON, although HCN emissions are not subject to control under the HON. Therefore, we needed to determine the point in the Sohio HCN production process where the Cyanide Chemicals Manufacturing source category begins.

We considered including all parts of the Sohio production process that contained HCN. However, because the Sohio production process is covered under the HON, many of the streams containing HCN may already be controlled to the HON level of control. Although HCN is not covered by the HON (*i.e.,* HCN is not included in table 2 to 40 CFR part 63, subpart F), the types of control devices (*i.e.,* combustion devices) utilized by Sohio facilities to comply with the HON also reduce HCN emissions. As a result, we concluded that the burden of overlapping standards would not justify the very small potential for additional HCN reductions.

We wanted to define a point so that there would be no overlap between a HON affected source and a cyanide chemicals affected source. There is a point in the Sohio production process where the HCN is separated from the acrylonitrile, typically in a unit operation referred to as the ''light ends column.'' Therefore, we defined the beginning of the Sohio HCN production process unit as the point the HCN leaves the unit operation where the HCN is

separated from the acrylonitrile. Because of our concern about the potential for overlapping requirements affecting a Sohio production process unit, we are specifically requesting comment on our proposed definition for the cyanide chemicals manufacturing affected source.

A primary raw material used in the production of sodium cyanide is HCN. Hydrogen cyanide that is produced in an Andrussow, BMA, or Sohio production process unit can be fed directly into a process to make sodium cyanide. Therefore, it was necessary to delineate the boundaries between an HCN process unit and a sodium cyanide process unit. Most commonly, HCN is refined in the HCN process and then fed into a reactor, where it is reacted with sodium hydroxide to form sodium cyanide. Therefore, we defined the beginning of the sodium cyanide process unit as the unit operation where refined HCN is reacted with sodium hydroxide. However, some facilities do not refine the HCN prior to reacting it with sodium hydroxide. In these cases, raw HCN is usually sent to an absorber, where it is absorbed into a sodium hydroxide solution to form sodium cyanide. Since the emission stream from this absorber is comparable to the emission stream from an absorber in a HCN process, we considered this absorber to be part of the HCN process unit, rather than part of the sodium cyanide process unit. Therefore, in situations where raw HCN is reacted with sodium hydroxide prior to being refined, we clarified that the sodium hydroxide process begins at the point that the aqueous sodium cyanide stream leaves the unit operation where the sodium cyanide is formed.

Additionally, in order to define the point at which the sodium cyanide production process begins, we are proposing definitions for raw HCN and refined HCN. In the proposed NESHAP, we have defined raw HCN as HCN that has not been through the refining process and usually has an HCN concentration less than 10 percent. We have also proposed a definition of refined HCN to mean the HCN that has been through the refining process and usually contains an HCN concentration greater than 99 percent. We are specifically requesting comments on the proposed definitions for raw HCN and refined HCN, as well as the point at which the sodium cyanide production process begins.

3. How Did EPA Select the Basis and Level of the Proposed NESHAP for Existing and New Sources?

We identified 16 facilities that manufacture cyanide chemicals which we believe represent the entire industry in the United States. For existing sources, the CAA requires us to establish emission standards that are at least as stringent as ''* *ensp;* the average emission limitation achieved by the best performing five sources * * *'' for categories or subcategories with fewer than 30 sources. For new sources, emission standards ''* * * shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.''

The term ''average'' is not defined in section 112(d)(3) of the CAA. We have the discretion within the statutory framework to set MACT floors at appropriate levels, and we have interpreted the term ''average'' to mean the mean, median, mode, or some other measure of central tendency (59 FR 29196).

We chose the median (the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude) as the measure of central tendency in this MACT floor analysis for existing sources. We found that, for this source category, the arithmetic mean resulted in a level of control that was not representative of any actual control technology. Using a median allowed us to select a MACT floor that corresponds directly to the level of control represented by a particular control device. Also, because the data set we used in our MACT floor analysis consists of data from only 16 facilities, we did not use a mode, which is more appropriate for large data sets.

We also considered whether to separate emission sources into groups by emission source type (*e.g.,* tanks, process vents, fugitive emission sources) based on equipment type, equipment size, equipment contents, stream characteristics, or control device applicability. Because of differences in emissions characteristics and vent stream characteristics, we separated the emission points in the Cyanide Chemicals Manufacturing source category by emission source type. We grouped the emission points into one of the following: Process vents, storage vessels, wastewater streams, equipment leaks, or transfer operations.

In addition, we may make grouping decisions within each emission source type based on equipment type, equipment size, equipment contents, stream characteristics, or other elements that could affect the emission potential of an emission point or the ability to reduce emissions from that emission point. We evaluated whether the different types of cyanide chemicals manufacturing processes should be considered for each emission source type. We concluded that for storage vessels, equipment leaks, wastewater, and transfer operations, the elements that can affect the emission potential of an emission point or the ability to reduce emissions from the emission point were not influenced by the type of process. For example, the ability to control HCN emissions from a storage vessel is not dependent on the type of process.

We did create groupings for process vents. Because of similarities in the types of unit operations and types of control devices being used in the Andrussow and BMA production processes, we grouped and analyzed these two processes together to determine the MACT floor for process vents. We did not include process vents from the Sohio HCN production process in this group, primarily because of the differences in process operations and controls. Specifically, the Sohio HCN production process vents typically have much lower emissions and are typically controlled by using a flare, while emissions from process vents in the Andrussow and BMA processes are somewhat higher and are typically controlled by a boiler.

Process vents in the sodium cyanide process were separated into wet-end process vents and dry-end process vents to determine the MACT floor. We did this primarily because emissions from dry-end process vents are particulate cyanide chemicals (*i.e.,* solid sodium cyanide), rather than gaseous emissions. Therefore, the types of controls used in the dry end may be different from those used in the wet end.

As previously discussed, the Cyanide Chemicals Manufacturing source category has fewer than 30 sources, so the MACT floor must be based on the best performing five sources. We determined the best performing cyanide chemicals manufacturing process units for each emission source type: Process vents (Andrussow/BMA process, Sohio HCN production process, wet-end sodium cyanide process vents, and dry-end sodium cyanide process vents), storage vessels, transfer operations, equipment leaks, and wastewater. If data were not available for each emission source type at five or more facilities, we determined the MACT floor based on the number of facilities for which data were available. The

following paragraphs discuss the MACT floor analysis for each emission source type.

a. *Process Vents.* We considered two basic measures of performance for determining the best performing sources. We considered a HAP emission factor, expressed as HAP emissions per unit of production. We also considered an overall process unit HAP emission reduction, expressed as a percent HAP reduction. Emission factors were calculated for each cyanide chemicals manufacturing process unit, but we rejected these factors for determining the MACT floor because we could not verify information on production rates, and the accuracy and bases of the emission rates were not always apparent. We, therefore, used the percent emission reduction across the process as the basis for ranking facilities within each process type because a percent emission reduction is less sensitive to the mass emission rate and does not rely on production rate. This approach was selected to determine the MACT floor levels of control for process vents, and the proposed standard is expressed as a required percent HAP emission reduction.

The following discussion presents the results of our MACT floor analysis for process vents for each type of cyanide chemicals manufacturing process.

*Andrussow/BMA process.* In our MACT floor analysis, we considered nine facilities that use the Andrussow or BMA process. All nine facilities reported that they use combustion to control HAP emissions from process vents. Of these nine facilities, we had control efficiency data for seven facilities. The emission reduction for all of the five best performing facilities is 99 weight-percent or greater. Therefore, we concluded that the MACT floor for existing sources is 99 weight-percent.

To determine the MACT floor for new sources, we attempted to determine the best performing source. We evaluated the reported control efficiencies for the five best performing sources in this group. All of the sources apply some form of combustion; however, we were unable to identify any technical basis for the reported differences in control efficiencies for these combustion devices. Therefore, we selected the MACT floor for new sources as 99 weight-percent.

All of the five best performing sources controlled emissions during startup, shutdown, or malfunction events using a flare. In general, we assume that a properly operated flare will achieve an emission reduction of 98 weight-percent. Therefore, we determined that the MACT floor for startup, shutdown, or malfunction events for new and existing process vents is a flare or a 98 weight-percent emission reduction.

To select the proposed MACT for process vents from the Andrussow/BMA process, we considered above-the-floor options for existing and new sources. As previously discussed, we could not identify the technical basis for the differences in reported emissions reductions for the combustion devices represented by the MACT floor. Thus, all of the combustion devices included in the MACT floor analysis were considered to be equivalent. Therefore, we did not identify a control technology more stringent than the MACT floor for process vents in the Andrussow or BMA processes. We are proposing that MACT for process vents from the Andrussow/BMA production process is the level of control represented by the MACT floor (*i.e.,* a 99 weight-percent emission reduction).

*Sodium cyanide (wet-end) process.* We had information for three sodium cyanide facilities that have wet-end process vents. One facility had uncontrolled process vents, and the other two facilities each had an emission reduction of 98 weight-percent based on the use of combustion devices and a median emission reduction of 98 weight-percent. Therefore, we determined that the MACT floor for new and existing sources is 98 weight-percent based on the use of a combustion device.

To select MACT for wet-end process vents, we considered the impacts of above-the-floor options for existing and new sources. As shown above, two of the three sodium cyanide facilities included in the MACT floor analysis are controlled, and we believe that the incremental costs (and the associated cost effectiveness) of achieving a small emission reduction greater than 98 weight-percent would be disproportional to the additional HAP emission reduction that would be achieved (*i.e.,* it would not be cost effective to require a facility to remove an existing combustion device and replace it with one that gets an additional 1 percent emission reduction). As a result, we did not perform an analysis of above-the-floor control technologies for wet-end process vents at sodium cyanide production facilities. Therefore, we are proposing that MACT for process vents in the wet end of sodium cyanide production facilities for existing and new sources is a 98 weight-percent emission reduction (i.e., the MACT floor).

*Sodium cyanide (dry-end) process.* Information was available for two sodium cyanide facilities with dry-end process vents. We had control efficiency data for both of these facilities. The control efficiencies were 83 weight-percent based on a cyclonic dust collector and 98 weight-percent based on a caustic scrubber, with the average emission reduction being 90 weight-percent. Therefore, we determined that the MACT floor for existing sources is 90 weight-percent and the MACT floor for new sources is 98 weight-percent.

To select MACT for dry-end process vents at existing sources, we evaluated the impacts of the MACT floor for new sources. We estimate that the incremental cost effectiveness associated with raising the existing source dry-end process vent emission reduction requirement from 90 weight-percent to 98 weight-percent is reasonable; therefore, we selected 98 weight-percent as MACT for existing sources.

We did not identify an option more stringent than the MACT floor for new sources. Therefore, we are proposing that MACT for dry-end process vents at new sources is the MACT floor.

*Sohio HCN production process.* There are five facilities using the Sohio HCN production process that were considered in the MACT floor analysis. Of these five facilities, we have control efficiency data for four facilities. The emission reduction ranges from 97.8 to 98 weight-percent. The median emission reduction for facilities for which there is available data is 98 weight-percent. Therefore, we determined that the MACT floor for new and existing sources is 98 weight-percent.

To select MACT for process vents from the Sohio HCN production process, we considered the impacts of above-the-floor options for existing and new sources. Several of the facilities included in the MACT floor analysis are controlled, and we believe that the incremental costs (and the associated incremental cost effectiveness) of achieving a small emission reduction greater than 98 weight-percent would be disproportional to the additional HAP emission reduction that would be achieved (i.e., it would not be cost effective to require a facility to remove an existing combustion device and replace it with one that gets an additional 1 percent emission reduction). As a result, we did not perform an analysis of above-the-floor control technologies for process vents at Sohio HCN production facilities. Therefore, we are proposing that MACT for process vents in Sohio HCN production facilities for existing and new sources is the MACT floor.

*Alternative standards and compliance options (all process vents).* Many of the facilities for which we have data control every process vent to a degree that would meet the proposed level of control. Clearly, the overall reduction would comply with the required reduction if each vent was achieving the required emission reduction. In this situation, we did not believe that owners or operators needed to calculate a process-unit-wide emission reduction. Therefore, we added the option that each process vent could be controlled to the required level. We believe that this would reduce the burden of demonstrating compliance for owners and operators in this situation.

In the preamble to the proposed New Source Performance Standards (NSPS) for Air Oxidation Unit Process (48 FR 48932, October 21, 1983), we stated that 20 ppmv is the lowest outlet concentration achievable by combustion of low concentration streams (i.e., streams with concentrations less than around 2,000 ppmv). In addition, we expanded the application of this lower bound concentration performance standard to control/recovery devices other than incinerators (61 FR 43698, August 26, 1996) controlling volatile organic compounds. Therefore, for all instances where the selected level of control is a specified percent reduction, we are proposing an alternative that would allow compliance by achieving an outlet concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions) for each individual emission point (*i.e.,* this option is not allowed if you are complying with a process-unit-wide process vent requirement). We believe that 20 ppmv is a reasonable level achievable for low-concentration streams. The exceptions to this are the requirements for sodium cyanide dry-end process vents. Since the emissions from these dry-end vents are particulate, the rationale for the 20 ppmv alternative is not applicable.

*Forms of the standards (all process vents).* The proposed standards for process vents include a combination of forms. For process vent streams controlled by control devices other than a flare, we selected the form of a numerical emission limitation (a weight-percent reduction or a concentration), either on an individual vent basis, or process-wide. This form was chosen based on the controls used at cyanide chemicals manufacturing facilities and the data available for our MACT analysis.

For vent streams controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

b. *Storage Tanks.* Information was available for HCN storage vessels at eight facilities. The HCN storage vessels are controlled at all eight facilities: Five with a flare as the primary control device, which we assume achieves 98 weight-percent emission reduction; one with a scrubber, which was reported to achieve an emission reduction of 98 weight-percent; one with a scrubber and flare in series; and one with a gas absorption column. We did not have control efficiency data for the facility with the scrubber and flare in series or for the facility with the gas absorption column; therefore, these facilities were not considered in the MACT floor analysis for storage vessels. The remaining facilities were ranked by emission reduction, and the five best performing facilities were determined to be those with the highest percentage emission reduction. The emission reduction associated with all of the top five facilities was 98 weight-percent. Thus, we determined the MACT floor for new and existing storage vessels to be an emission reduction of 98 weight-percent through the use of a flare or other control device.

To select the proposed MACT for storage vessels, we did not identify any control technologies more stringent than the MACT floor that would be applicable. Although combustion technologies exist that could achieve an emission reduction higher than the MACT floor level of 98 weight-percent, we believe that due to the intermittent nature of storage vessel emissions, flares are the most appropriate combustion control technology available for this emission source type. Thus, we did not perform an above-the-floor analysis for storage vessels. Therefore, we are proposing that MACT for storage vessels for existing and new sources is the level of control represented by the MACT floor.

The proposed storage vessel provisions include a combination of forms. For storage vessels that contain HCN that are controlled by a control device other than a flare, we are proposing an emission limitation in the form of a specified weight-percent requirement. We selected this form to give owners and operators the flexibility to install an applicable control technology to meet the MACT floor.

For storage vessels controlled by venting emissions to a flare, we have selected a form consisting of equipment and operating specifications, consistent with the format for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

c. *Equipment Leaks.* We have information regarding equipment leak emission control programs for ten facilities. Four of these facilities are subject to the equipment leaks NSPS in 40 CFR part 60, subpart VV. Six facilities are subject to State equipment leak requirements. To define the five best performing facilities, we compared the State rules to subpart VV and concluded that subpart VV was either equivalent to, or more stringent than, the State rules. Therefore, the median facility was determined to be a facility subject to subpart VV. Thus, we determined that the MACT floor for new and existing equipment leaks is subpart VV.

We identified one alternative that is more stringent than the MACT floor for equipment leaks. The equipment leak provisions in the HON are more stringent than the subpart VV level of control. The level of control in subpart VV is equivalent to the Generic MACT control level 1, which is contained in 40 CFR part 63, subpart TT. The HON level of control is equivalent to the Generic MACT control level 2, which is contained in 40 CFR part 63, subpart UU.

The basic elements of both the level 1 and level 2 equipment leak programs are the same; however, level 2 requires connector monitoring and has a significantly lower leak definition. Due to the wide range of compliance options and performance-based incentives that reduce the monitoring frequencies, it is difficult to assess the incremental difference in costs between these two levels of control. In addition, due to the highly lethal nature of HCN, cyanide chemicals manufacturing process units are much more rigorously maintained than process units producing other, less lethal chemicals. Because of these factors, we do not believe that the additional emission reduction would justify the costs associated with requiring a cyanide manufacturing facility to comply with the HON program. Therefore, we concluded that it is not appropriate to require that existing and new sources comply with 40 CFR part 63, subpart UU.

However, we recognize that many cyanide chemicals manufacturing process units are collocated with HON facilities. In fact, HCN produced in a

Sohio HCN production process is actually a byproduct of a HON process. For the sake of consistency, some owners or operators of cyanide chemicals manufacturing process units may prefer to comply with the HON equipment leak program. Therefore, we are proposing the option of complying with either 40 CFR part 63, subpart TT or UU.

The form of the provisions for equipment leaks consists of work practice and equipment specifications. We have determined that it is not feasible to prescribe or enforce emission standards because emissions cannot be emitted through a conveyance device, and the application of a measurement methodology is not practicable due to technological or economic limitations (57 FR 62608).

We considered whether it is appropriate to require owners and operators to monitor all equipment components (i.e., connectors, flanges, valves). We concluded that there could be situations where the costs of monitoring equipment with very low HAP emission potential are not reasonable. Therefore, we are proposing an applicability cutoff for equipment components based on the amount of time the equipment contains or contacts HAP. We are proposing an applicability cutoff of 300 hours per year. We selected this cutoff based on what has been adopted under previously promulgated NESHAP for equipment containing or contacting organic HAP (i.e., the HON) because we had insufficient data on equipment leak emissions and control at cyanide manufacturing facilities.

We are proposing to exempt open ended lines that contain HCN or acrylonitrile from the requirements of 40 CFR part 63, subparts TT and UU. According to industry representatives, closing open ended lines that contain or contact HCN or acrylonitrile could potentially lead to trapped volumes of these chemicals, which could polymerize and raise significant safety concerns.

d. *Transfer Operations.* We have information for HCN transfer operations at three cyanide chemicals facilities. Two of these facilities control emissions from transfer operations using a flare. The third facility routes HCN emissions from transfer operations to a vent scrubber with a flare as a backup. The emission reduction for all three of these facilities with transfer operations is reported to be 98 weight-percent. Thus, we determined the MACT floor for new and existing transfer operations to be an emission reduction of 98 weight-percent through the use of a flare or other device.

To select the proposed MACT for transfer operations, we did not identify any control technologies more stringent than the MACT floor that would be applicable. Although combustion technologies exist that could achieve an emission reduction higher than the MACT floor level of 98 weight-percent, we believe that the intermittent nature of transfer operation emissions make flares the most appropriate combustion control technology for this emission source type. Thus, we did not perform an above-the-floor analysis for transfer operations. Therefore, we are proposing that MACT for transfer operations for existing and new sources is the level of control represented by the MACT floor.

The proposed standards for transfer operations include a combination of forms. For transfer racks that are used to load HCN into tank trucks and rail cars that are controlled by control devices other than a flare, we are proposing an emission limitation in the form of a specified weight-percent requirement. This form was chosen based on controls used at cyanide chemicals manufacturing facilities and the data available for our MACT analysis. We selected this form to give owners and operators the flexibility to implement an applicable control technology to meet the MACT floor.

For transfer racks controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries and emission points. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

e. *Wastewater Treatment Operations.* Wastewater is generated from the Andrussow and BMA cyanide manufacturing processes. We had information available on the wastewater handling practices for seven facilities in the Cyanide Chemicals Manufacturing source category. All seven of these facilities have wastewater treatment units in place at their facility necessary to meet either their National Pollutant Discharge Elimination System (NPDES) permit requirements if they are allowed to discharge directly to a body of navigable water, or to meet the requirements for discharging to a publicly owned treatment works facility if they have an indirect discharge permit. Therefore, the median of the top five facilities has a wastewater treatment system in place to meet permitted effluent discharge limits. These wastewater treatment systems are comprised of a series of tanks used for settling, neutralization, clarification, and in some cases, biodegradation (most commonly found at facilities with NPDES permits). All of these wastewater treatment tanks are open to the atmosphere.

The wastewater generated from these cyanide chemicals manufacturing facilities tends to enter a collection system (typically a sewer) through drains, sumps, trenches, and hotwells in the process area. The collection system carries the wastewater from the process down to the wastewater treatment system. Our information on these cyanide manufacturing facilities does not indicate that there are controls in place to suppress HAP emission losses from the wastewater en route to the wastewater treatment plant. Therefore, the collection and drain system design is presumed to be typical of that found in other SOCMI facilities, in which these HAP emissions vent to the atmosphere through conveyance points such as junction boxes, man holes, and lift stations. The tanks in the wastewater treatment plant are open to the atmosphere, where further HAP losses occur through a combination of evaporation and mechanical agitation. Six of these seven facilities report that they have a biological treatment tank or open pond.

We are aware that biological treatment units at SOCMI facilities are capable of achieving HAP emissions reductions. However, the biological treatment units at these cyanide manufacturing facilities were installed to meet requirements associated with discharge of the effluent. These units were not designed for the purpose of reducing HAP emissions to the ambient air, and we believe that any associated reductions of air emissions are insignificant. For this component of the wastewater treatment system to achieve significant reductions in air emissions, the wastewater in the drain and conveyance systems, both within the process and going down to the wastewater treatment system, must be designed such that HAP emissions are suppressed so that they can reach the biological treatment system. In addition, the tanks in the wastewater system prior to the biotreatment tank must also employ suppression controls.

Site specific variability in performance of biotreatment tanks is significant. Although all of these facilities report a high level of removal of known HAP across their wastewater treatment systems, how much of the HAP that are actually destroyed, as opposed to stripped to the air, is unknown. The degree that HAP removal occurs through biological destruction is a function of many factors, including

the aeration rate, the biomass, the retention time in the tank, the biological degradation rate, and surface area. As noted in the promulgation preamble to the HON, ''* * * the variability in performance makes it difficult to quantify a required emission reduction for the purpose of setting a standard. Emission reductions for biological treatment systems can only be determined on a site-specific basis * * *'' (59 FR 19423). Moreover, given the site-specific nature of these systems, it would be difficult to develop even a qualitative work practice standard based on the median of the top five of these facilities that would both be achievable across the source category and consistent with continued compliance with effluent discharge permits. For these reasons, we have determined that the MACT floor for existing sources is no further control requirements for wastewater beyond current practices.

Two of the top five facilities report that they treat their process wastewater using stripping technology. One of these facilities sends their wastewater to a steam stripper, and the stripper effluent then goes to their wastewater treatment system. The other facility uses an air stripper and sends the stripper effluent to an ozonation step and then on to the wastewater treatment system. Both facilities control the vents on the strippers by 98 percent through thermal oxidation. The steam stripper is achieving 95 percent removal across the stripper. The air stripping system reports similar performance, although steam stripper performance is better understood in terms of its ability to remove HAP from wastewater and is generally considered a more widely applicable control technology for removing HAP from wastewater. Therefore, we have identified steam stripping achieving 95 percent HAP removal with 98 percent control of the stripper vent to be the MACT floor for new sources. We do not have any information that would aid us in setting an applicability cutoff for wastewater streams based on flow rate and HAP concentration. We do have information on the specifically-named wastewater streams being sent to the steam stripper. Therefore, the new source MACT floor also specifies the streams that must be controlled.

We are unaware of any technologies capable of performing at a higher control level than the steam stripping system representing the new source MACT floor. For this reason, we are not going beyond-the-floor to set MACT for new sources. We then considered whether this same stripping technology with control of the stripper vent is an appropriate control technology beyond-the-floor for existing sources. Since these cyanide manufacturing processes are similar to other SOCMI type processes previously regulated under other subparts, we evaluated what levels of wastewater flow and HAP concentration were considered necessary to yield a reasonable cost effectiveness beyond-the-floor. Our available information on cyanide manufacturing wastewater indicates that the flow rates and HAP concentrations fall well below applicability cutoffs established under these previously issued subparts. For that reason, we believe that the cost effectiveness of going beyond-the-floor for existing cyanide manufacturing sources is not reasonable.

We did not evaluate wastewater air emissions from sodium cyanide manufacturing wastewater. These process units typically have some type of water treatment that is part of the actual process unit. Vents from these treatment processes are considered to be part of the wet end production unit process vents and are regulated in the process vent portion of this proposed rule. We had no data indicating that the streams exiting these process units contain any HAP except for sodium cyanide, which is not volatile.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts YY, SS, TT, UU, and WW to demonstrate and document compliance with the cyanide chemicals manufacturing standards. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Cyanide Chemicals Manufacturing source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (§§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These requirements are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.,* HAP concentration cutoff level, above which, control is required).

We selected emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirement subparts promulgated for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subpart UU or TT); and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the source category requirements previously promulgated under 40 CFR part 63, subpart YY (63 FR 55186–55191).

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of subparts YY, SS, TT, and UU are appropriate for demonstrating and documenting compliance with the requirements proposed for the Cyanide Chemicals Manufacturing source category. This is because these requirements were established for standards with similar form and similar emission points with pollutant streams of gaseous HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

*D. Summary of Environmental, Energy, Cost, and Economic Impacts?*

1. What Are the Air Quality Impacts?

Nationwide baseline HAP emissions from the Cyanide Chemicals Manufacturing source category are estimated to be 238 Mg/yr (263 TPY). These proposed NESHAP will reduce HAP emissions by approximately 106 Mg/yr (117 TPY). This is a 45 percent reduction from the baseline level for this source category and a 58 percent reduction for those facilities required to install controls to comply with the proposed NESHAP.

We also estimate that the proposed NESHAP for the Cyanide Chemicals Manufacturing source category will reduce emissions of volatile organic compounds (VOC) by 102 Mg/yr (113 TPY). We estimate that the proposed NESHAP will result in an increase in sulfur oxide ($SO_X$) emissions of 7.3 Mg/

yr (8 TPY), an increase in nitrogen oxide ($NO_X$) emissions of 10.3 Mg/yr (11.4 TPY), an increase in carbon monoxide (CO) emissions of 42.1 Mg/yr (46.4 TPY), and an increase in particulate matter (PM) emissions of 0.3 Mg/yr (0.3 TPY). The increases in emissions result from the on-site combustion of fossil fuels and emission streams as part of control device operations.

2. What Are the Cost and Economic Impacts?

The total estimated capital cost of the proposed NESHAP for the Cyanide Chemicals Manufacturing source category is $939,000. The total estimated annual cost of the proposed NESHAP is $2.4 million (fourth quarter 1998 dollars).

We prepared an economic impact analysis to evaluate the impacts the proposed NESHAP would have on the cyanide manufacturing market, consumers, and society. The total annualized social cost (in 1998 dollars) of the proposed NESHAP on the industry is $2.4 million, which is much less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis indicates that no individual firm affected by the proposed NESHAP would experience costs in excess of 0.001 percent of sales. For this reason, we believe that the impact of the proposed NESHAP will be minimal. No facility closures are expected as a result of the proposed NESHAP.

3. What Are the Nonair Health, Environmental, and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental, or energy impacts associated with the proposed NESHAP for the Cyanide Chemicals Manufacturing source category. This is supported by impacts analyses associated with the application of the control and recovery devices required under the proposed NESHAP. We determine impacts relative to the baseline that is set at the level of control in absence of the standards.

Control of equipment leaks will reduce the amount of HAP-containing material that could be discharged to a facility's wastewater treatment stream through equipment washdowns or from stormwater runoff. The use of a scrubber for HAP control from vents results in an effluent wastewater stream from the scrubber that would add a small amount of wastewater to that already being handled at the facility's wastewater treatment system.

There are minimal solid or hazardous waste impacts associated with the proposed NESHAP. A small amount of solid waste may result from replacement of equipment such as seals, packing, rupture disks, and other equipment components, such as pumps and valves. A minimal amount of solid or hazardous waste could be generated from the use of steam strippers to control wastewater emissions. The possible sources include organic compounds recovered in the steam stripper overheads condenser or solids removed during feed pretreatment.

The energy demands associated with the control technologies for the proposed NESHAP include the need for additional electricity, natural gas, and fuel oil. The storage tank, transfer operations, equipment leak, and wastewater controls are not expected to require any additional energy. The total nationwide energy demands that would result from implementing the process vent controls are approximately 3.1 x $10^{14}$ Joules per year.

## III. Carbon Black Production

### *A. Introduction*

1. What Are the Primary Sources of Emissions and What Are the Emissions?

We evaluated the following potential HAP emission sources at carbon black facilities: (1) Process vents, (2) equipment leaks, (3) storage vessels, and (4) wastewater. Based on available information, we have discerned that process vents from the main unit filter comprise most of the HAP emissions from carbon black facilities. Process vent emissions consist of tailgas from the reactors. The reactor tailgas is sent to a baghouse where the carbon black is separated from the tailgas. The main unit filter is where the carbon black is separated from the tailgas. After separation of the carbon black product, most of the tailgas is emitted to the atmosphere or sent to a combustion control device. The process vents after the main unit filter consist of vents from unit operations involved in the processing of the carbon black into final product. Hazardous air pollutant emissions may occur from process vents after the main unit filter, but the amount of HAP emitted from these vents is very small compared to the amount emitted from process vents from the main unit filter.

In our evaluation of equipment leaks, we found that leaks were not a significant source of HAP emissions for the Carbon Black Production source category. One of the reasons for this is the low vapor pressures of the raw materials used in the production process (*i.e.*, the typical carbon black feedstock is less than 0.05 kilopascals).

As with equipment leaks, our evaluation of the potential for HAP emissions from storage vessels indicated that they were not a significant source of emissions from carbon black production facilities. This is because the typical feedstock oil used in the carbon black production process is heavy fuel oil, which, because of its low vapor pressure, is not likely to be emitted to the atmosphere under normal operating conditions. In addition, the feedstock oil is nearly solid under standard pressure and temperature and typically needs to be heated to (and maintained at) 120 degrees Fahrenheit to allow it to flow as a liquid.

In our evaluation of wastewater, we did not identify any wastewater emissions of consequence as a result of the carbon black production process. The process uses a quench tower to capture the product, and the effluent guidelines applicable to this source category require that there be no discharge of process wastewater to navigable waters from carbon black production facilities.

We estimate 1996 baseline HAP emissions from the Carbon Black Production source category to be 7,000 Mg/yr (7,700 TPY). This estimate reflects emissions from process vents.

2. What Are the Health Effects Associated With the HAP Emitted?

The principal HAP that we have identified as being associated with carbon black production facilities include carbon disulfide, carbonyl sulfide, and hydrogen cyanide. In the following paragraphs, we present a discussion on the effects of inhalation exposure to these compounds.

*Carbon disulfide.* Acute (short-term) inhalation exposure of humans to carbon disulfide has caused changes in breathing and chest pains. Acute human inhalation exposure to carbon disulfide has also been associated with nausea, vomiting, dizziness, fatigue, headache, mood changes, lethargy, blurred vision, delirium, and convulsions.

Chronic (long-term) carbon disulfide human exposure and inhalation studies indicate the potential for adverse neurologic effects. There is also a potential for reproductive effects in humans, such as decreased sperm count and menstrual disturbances, that have had chronic inhalation exposure to carbon disulfide. Developmental effects, including toxic effects to the embryo and malformations and functional and behavioral disturbances in offspring, have been observed in studies on laboratory animals with chronic inhalation exposure to carbon disulfide.

*Carbonyl sulfide.* Acute inhalation exposure to carbonyl sulfide in high concentrations may cause narcotic effects in humans and may irritate eyes and skin. No information is available on the chronic effects of carbonyl sulfide in humans.

*Cyanide compounds.* Acute inhalation exposure to high concentrations of cyanide compounds can be rapidly lethal. Acute inhalation of hydrogen cyanide at lower concentrations can cause a variety of adverse health effects in humans, such as weakness, headache, nausea, increased rate of respiration, and eye and skin irritation. Chronic inhalation exposure to cyanide compounds can result in effects on the central nervous system, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. Other chronic inhalation exposure effects in humans include cardiovascular and respiratory effects, an enlarged thyroid gland, and irritation to the eyes and skin.

*B. Summary of Proposed Standards for Carbon Black Production*

1. What Is the Source Category To Be Regulated?

We have defined the Carbon Black Production source category to include any facility that produces carbon black by the furnace black process, thermal black process, or the acetylene decomposition process. The furnace black process is a closed system thermal-oxidative decomposition process, the thermal black process is a cyclic thermal decomposition process, and the acetylene black process is a continuous thermal decomposition process. Carbon black is primarily used as a reinforcing agent for rubber. The largest use of carbon black is in the manufacture of automotive and truck tires.

2. What Is the Affected Source?

We have defined the affected source to include each carbon black production process unit, along with associated process vents and equipment that are located at a major source, as defined in section 112(a) of the CAA. We define a carbon black production process unit as the equipment assembled and connected by hard-piping or duct work to process raw materials used to manufacture, store, and transport a carbon black product.

3. What Are the Emission Limits, Operating Limits, and Other Standards?

For existing and new sources, we are proposing the same requirements for process vents. For process vents that are associated with the main unit filter, we are proposing requirements to control HAP emissions by venting emissions through a closed vent system to a flare, or by venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP by 98 weight-percent. As an alternative to meeting a 98 percent by weight HAP emission limit, we are proposing that an owner or operator may comply with the NESHAP by reducing emissions of HAP from their process vents from continuous unit operations to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission points similar to those for which we are proposing standards with this action. For example, we are proposing applicability determination procedures to determine whether a process vent stream is required to apply control, and performance tests and test methods to demonstrate that the emission limits are achieved when controls are applied. The proposed requirements are dependent on the control device selected.

We are proposing control applicability determination procedures to measure process vent flow rate and process vent HAP concentration. The proposed test methods parallel what we have used for process vent organic HAP emission point sources in previous standards. For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream HAP concentration to determine whether the vent stream HAP concentration is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all control devices other than flares and certain boilers and process heaters used as control devices for HAP emissions from process vents. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 MW (150 million Btu/hr) because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of organic HAP emissions are reduced, or an outlet concentration of 20 ppmv organic HAP is achieved. For flares, a percent reduction and outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary if the control device is a boiler, a process heater larger than 44 MW (150 million Btu/hr), or a flare. We proposed performance tests that ensure that a control device can achieve the required control level and help establish operating parameters that are indicative of proper operation and maintenance.

We are proposing that continuous compliance with emission standards for process vents be demonstrated by monitoring control device operating parameters established during the performance tests or specified in the standards (as applicable). The proposed requirements for carbon black production list the parameters that can be monitored for the common types of combustion devices. For other control devices, we would require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and operating permit. Parameters selected are required to be good indicators of continuous control device performance.

In addition to testing and monitoring of emissions control equipment, we are also proposing that the closed vent system that routes emissions to control equipment be initially and annually tested for HAP emissions leaks (*i.e.*, a measurement greater than 500 ppmv. If a leak is detected, we would require that you eliminate the leak and monitor equipment (no later than 15 calendar days after the leak is detected).

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements that parallel the General Provisions (40 CFR part 63, subpart A), and requirements to document compliance that are similar to those previously developed and used for similar emission points.

We are proposing that owners or operators of carbon black production affected sources submit the following four types of reports: (1) Initial Notification, (2) Notification of Compliance Status, (3) periodic reports, and (4) other reports. Records of reported information and other information necessary to document compliance with the proposed NESHAP

would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification, we are proposing that you list the carbon black production processes at your facility and the provisions that may apply. The Initial Notification would also be required to include a statement as to whether your facility can achieve compliance by the specified compliance date. This notification would be required to be submitted within 1 year after the date of promulgation for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. We provide information on the requirements and information to be provided to us for performance tests and other methods of compliance determination for process vents and equipment. For each test method used for a particular kind of emission point (*e.g.*, process vent), one complete test report would be required to be submitted. This notification would also be required to include the specific range for each monitored parameter for each emission point for determining continuous compliance, and the rationale for why this range indicates proper operation of the control device.

For periodic reports, we are proposing that you report periods when the values of monitored parameters are outside the ranges established in the Notification of Compliance Status report. For process vents, records of continuously monitored parameters must be kept. For equipment leaks, inspections and/or leak detection monitoring records must be kept. These records would only be required to be submitted in the periodic report if a leak is detected. We are proposing that these reports be submitted semiannually, or quarterly if monitored parameter values for a particular emission point are outside the established range by a given percentage of the operating time.

Other reports that we are proposing to require include reports to the regulatory authority before or after a specific event (*e.g.*, if a process change is made, requests for extension of repair period).

*C. Rationale for Selecting the Proposed Standards for Carbon Black Production*

1. How Did EPA Select the Source Category?

We listed Carbon Black Production as a category of major sources of HAP on June 4, 1996 (61 FR 28197). We listed this category due to potential emissions of carbon disulfide, carbonyl sulfide, and hydrogen cyanide. When we originally listed the Carbon Black Production source category, we stated that it included facilities that manufacture carbon black using the channel, thermal, or furnace process (61 FR 28197). In gathering and evaluating more extensive information on the production of carbon black, we determined that the furnace black process is the dominant production process utilized in this source category. The other types of production processes we identified that are currently used in the United States to produce carbon black are the thermal, acetylene, and lampblack processes. Therefore, in our proposed definition of carbon black production, we specify the furnace black, thermal, acetylene, and lampblack processes.

The CAA allows us to define subcategories, or subsets of similar emission sources within a source category, if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31576). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission control, emissions sources, and any other factors that would impact a MACT standard. We did not identify differences between the four carbon black production processes included in the source category that we believe meet the criteria presented above for subcategorization. They all have the same basic unit operations, HAP emission sources, and ability to control the HAP emissions. Thus, we determined that it was not necessary to divide this source category into subcategories.

2. How Did EPA Select the Affected Source?

The affected source is the group of unit operations, equipment, and emission points that are subject to the proposed NESHAP. We can define the affected source as narrowly as a single item of equipment or as broadly as all equipment at the plant site that is used to manufacture the carbon black product. The affected source defines the collection of equipment that you would evaluate to determine whether replacement of components at an existing affected source would qualify as a reconstruction. If we define the affected source narrowly, it could affect whether some parts of a process unit would be subject to new source requirements or existing source requirements. We are proposing the same requirements for existing and new sources for carbon black production emission points. Therefore, the only implication for narrowly defining the carbon black production affected source would be when the source would have to comply with the standards.

We selected the process unit that manufactures carbon black as the foundation for the affected source. We defined the carbon black production process unit as the collection of equipment, assembled and connected by hard-piping or duct work, that is used to process raw material to manufacture the carbon black product. We evaluated the potential HAP emission sources at carbon black production facilities and determined that most HAP emissions occur from a single point. This point is the process vent from the main unit filter, which includes the ''tailgas'' from the reactor, along with miscellaneous streams from other unit operations.

Based on the available information, we concluded that HAP emissions from storage vessels, equipment leaks, and wastewater were not significant. In fact, no HAP emissions or HAP emission controls were reported by industry for storage vessels and wastewater at any carbon black facility. Therefore, we have not included storage vessels and wastewater streams as part of the affected source.

In summary, we are proposing that the affected source for carbon black production include each carbon production process unit located at a major source, including all process vents from the main unit filter, and equipment (*i.e.,* connectors, pumps, valves) after the reactor that contains or contacts HAP that are associated with the carbon black production process unit.

3. How Did EPA Determine the Basis and Level of The Proposed NESHAP for Existing and New Sources?

Eight companies operate 22 carbon black production facilities in the United States. For a source category with under 30 sources, section 112(d)(3) of the CAA directs that the MACT floor for existing sources be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source

category is required to reflect the level of control being achieved by the best controlled similar source. The term ''average'' is not defined in the CAA. On June 6, 1994 (59 FR 29196), we announced our conclusion that Congress intended ''average,'' as used in section 112(d)(3), to be the mean, median, mode, or some other measure of central tendency. We also concluded that we retain substantial discretion within the statutory framework to set MACT floors at appropriate levels, and that we construe the word ''average'' (as used in section 112(d)(3)) to authorize us to use any reasonable method, in a particular factual context, of determining the central tendency of a data set.

We chose the median as the measure of central tendency in our MACT floor analysis for process vents and equipment after the reactor for existing sources. We chose the median because the arithmetic mean resulted in a level of control that did not correspond to any actual control technology. Using a median allowed us to select a MACT floor level of control that corresponds to the level of control represented by an existing control device. Additionally, since our MACT floor analysis consisted of data from only 22 facilities, choosing the mode as the measure of central tendency did not make sense, since the mode is more appropriately used when there is a large data set.

One decision that we must make is how to ''group'' emission sources in the MACT floor analysis. We often separate emission sources into groups by emission source type (*e.g.,* tanks, process vents, fugitive emission sources). For the Carbon Black Production source category, we identified the process vent from the main unit filter as a group for purposes of determining MACT.

For process vents from the main unit filter, we determined the MACT floor for existing sources to be a 98-weight-percent HAP emission reduction. This floor level of control represents the five best performing facilities that achieved the highest level of emissions reductions and had the lowest reported uncontrolled (inlet) total HAP concentrations (considering vent flow rate) for the main unit filter process vent. Since all combustion devices in our database achieve a 98-weight-percent HAP emission reduction, we based the best controlled facilities on those facilities that control the lowest inlet concentration streams (considering vent flow rate). We believe, based on engineering judgement, that these low uncontrolled (inlet) total HAP concentrations represent the most difficult main unit filter process vent emission streams to control in the Carbon Black Production source category.

For process vents from the main unit filter, we were unable to identify a method of control in practice that would achieve a greater level of HAP emissions control than the MACT floor levels for existing sources. Therefore, we determined that the MACT floor for new sources for process vents from the main unit filter is the same as the MACT floor for existing sources (*i.e.,* a 98-weight-percent HAP emission reduction).

For process vents from the main unit filter, we estimated and evaluated the impacts of above-the-floor options for existing and new sources. We did not identify a viable above-the-floor option for process vents from the main unit filter for existing or new sources. Therefore, we are proposing that MACT for process vents from the main unit filter for existing and new sources is the level of control represented by the MACT floor (*i.e.,* a 98-percent HAP emission reduction).

In our evaluation of control options for carbon black facilities for process vents after the main unit filter, we determined that the MACT floor for existing and new sources is no control. This floor level of control represents the five best performing facilities that achieved the highest level of emissions reductions and had the lowest reported uncontrolled (inlet) total HAP concentrations (considering vent flow rate) for process vents after the main unit filter. Four of the five facilities did not indicate any air emissions control after the main unit filter. One facility reported process modifications that reduce the residual HAP levels in the process after the main unit filter by 98 weight-percent. Since this facility's level of control does not correspond to a control type, we determined that the MACT floor for both existing and new sources was no control.

We estimated and evaluated the impacts of above-the-floor options for process vents after the main unit filter. We evaluated controlling process vents after the main unit filter to 98 weight-percent as an above-the-floor option. We determined that the cost effectiveness of this option is unreasonable. Therefore, we selected the MACT floor level of control for process vents located after the main unit filter process to be MACT (*i.e.,* no control).

In determining MACT for process vents, we considered whether it was appropriate to apply a 98 weight-percent emission reduction requirement to all process vents from main unit filters. We determined that for low-concentration streams (*i.e.,* streams with concentrations less than around 1,000 ppmv), a 98 weight-percent reduction may not be achievable for all process vents from the main unit filter. Therefore, we are proposing an alternative to the 98 weight-percent reduction requirement for main unit filter process vents at existing and new affected sources. This alternative standard is a HAP or total organic compound (TOC) concentration limit of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), which we have determined is a reasonable level achievable for low-concentration streams.

In determining MACT for process vents from the main unit filter, we also selected a control applicability cutoff for existing and new sources, below which the vent would not be subject to control requirements. We selected an applicability cutoff for existing and new sources that represents the lowest inlet concentration reported at one of the best controlled facilities. The proposed cutoff is 260 ppmv.

The standards that we are proposing for process vents from the main unit filter in the carbon black production source category have various forms. These forms consist of a combination of emission standards and equipment, design, work practice, and operational requirements consistent with requirements promulgated for similar emission points and emission characteristics. For process vent streams controlled by control devices other than a flare, we selected the form of a numerical emission limitation (a weight-percent reduction and a concentration). This form was chosen based on the controls used at carbon black facilities and the data available for our MACT analysis.

For vent streams controlled by a flare, we selected a form consisting of equipment and operating specifications, consistent with the form for flare requirements that we have specified for other industries. This is because it is very difficult to measure the emissions from a flare to determine its efficiency.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS, UU, and YY to demonstrate and document compliance with the carbon black production standards. The procedures and methods set out in these subparts are, where appropriate, based

on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Carbon Black Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (*i.e.,* §§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply controls. These procedures are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.,* a HAP concentration cutoff level, above which control is required).

We selected monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirement subparts promulgated for equipment leaks (40 CFR part 63, subpart UU), and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous organic HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the source category requirements previously promulgated under 40 CFR part 63, subpart YY (63 FR 55186–55191).

The compliance, monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS, UU, and YY, are appropriate for demonstrating and documenting compliance with the requirements proposed for the Carbon Black Production source category. This is because these requirements were established for standards with similar forms and similar emission points, and with pollutant streams of gaseous organic HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

*D. Summary of Environmental, Energy, Cost, and Economic Impacts*

1. What Are the Air Quality Impacts?

For the Carbon Black Production source category, we estimate that the proposed NESHAP would reduce HAP emissions by 1830 Mg/yr (2,020 TPY). This is a 26 percent reduction from the total baseline HAP emissions for this source category and a 95 percent reduction for those facilities that would be required to install controls to meet the standards.

We estimate that the proposed NESHAP for the Carbon Black Production source category would reduce CO emissions by 474,000 Mg/yr (522,000 TPY), VOC by 16,900 Mg/yr (18,600 TPY), hydrogen sulfide ($H_2S$) by 10,300 Mg/yr (11,300 TPY), and PM by 740 Mg/yr (820 TPY). We estimate that the proposed NESHAP would increase $SO_X$ emissions by 32,900 Mg/yr (36,200 TPY) and $NO_X$ by 1,140 Mg/yr (1,260 TPY) as a result of on-site combustion of fossil fuels. However, the air quality benefits of the proposed NESHAP (*i.e.*, reductions in HAP, CO, VOC, and $H_2S$ emissions) outweigh the negative impacts associated with the anticipated increases in emissions of $SO_X$ and $NO_X$.

2. What Are the Cost and Economic Impacts?

The total estimated capital cost of the proposed NESHAP for the Carbon Black Production source category is $54.9 million. The total estimated annual cost of the proposed NESHAP is $10.6 million. These costs represent fourth quarter 1998 dollars.

We prepared an economic impact analysis to evaluate the impacts these proposed NESHAP would have on the carbon black production market, consumers, and society. The total annualized social cost (in 1997 dollars) of the proposed NESHAP to the industry is $10.6 million, which is less than 0.001 percent of total baseline revenue for the affected sources. A screening analysis suggests only one of the firms affected by the proposed NESHAP would experience costs in excess of 1 percent of sales, and no firm would experience costs in excess of 1.5 percent of sales. For this reason, we believe the impact of the proposed NESHAP will be minimal. We expect no facility closures as a result of the proposed NESHAP.

3. What Are the Nonair Health, Environmental, and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental or energy impacts associated with the proposed NESHAP for the Carbon Black Production source category. This is supported by impacts analyses associated with the application of the control and recovery devices required under the proposed NESHAP. We determine impacts relative to the baseline that is set at the level of control in absence of the proposed NESHAP.

There are no water pollution and solid waste impacts from the use of air emission control devices in the Carbon Black Production source category. An increase in energy consumption will result from the use of combustion control systems. We estimate that the Carbon Black Production source category will consume an additional 186 million cubic feet of natural gas per year to meet the regulatory requirements of the proposed NESHAP. This would represent an increase in total domestic natural gas consumption of less than 1/100th of one percent.

*E. Solicitation of Comments*

Representatives of the carbon black industry have expressed concern with requirements in the proposed NESHAP to monitor for leaks from air stream conveyance systems. Under 40 CFR part 63, subpart SS, we are requiring facility owners/operators to monitor for HAP leaks from connectors and other equipment involved in the conveyance of HAP containing air emission streams required to be controlled by the proposed NESHAP.

Industry concern so far has centered around two issues: (1) That the large amount of nitrogen in carbon black facility air streams may provide false positive readings; and (2) that EPA Method 21 (the required test method) may not detect the nonorganic HAP present in the gas stream for a carbon black facility and, therefore, may not be an effective monitoring procedure. We are soliciting further industry comments and data on these two issues in order to more effectively address them in the final NESHAP.

Many carbon black production facilities use flares to control HAP emissions. The flares used by the industry are commonly called hydrogen flares due to the presence of large amounts of hydrogen in emission streams being controlled. On May 4, 1998, we published a direct final rule (63 FR 24436) to add operating requirements designed to ensure that a 98 weight-percent destruction of organic HAP and VOC is achieved by hydrogen flares. We are aware that some members of the carbon black industry use flare designs that differ from the flare type used to establish our current requirements for hydrogen flares. While some industry flares may not meet our current operating procedures, they

might meet the required 98 weight-percent level required by the proposed NESHAP.

We are soliciting test data collected by industry that would show that flare types used by the carbon black industry achieve 98 weight-percent control. If we determine the data submitted to be adequate, a revision to the hydrogen flare requirements could be promulgated. This revision potentially would allow the use of certain flares meeting the required destruction efficiency, yet operating outside of the parameters we established in the May 4, 1998, **Federal Register** notice to be used to meet the requirements of the proposed NESHAP.

## IV. Ethylene Production

### *A. Introduction*

#### 1. What Are the Primary Sources of Emissions and What Are the Emissions?

The following emission types (*i.e.*, emission points) are the primary sources of emissions being covered by the proposed NESHAP: Equipment (including pumps, compressors, pressure relief devices, valves, and connectors); storage vessels; transfer racks; process vents; heat exchange systems; and waste operations. We address pyrolysis furnaces and decoking operations, but there are no specific control requirements for these two emission types.

A variety of HAP are emitted during the ethylene manufacturing process. The HAP emitted by the facilities covered by the proposed NESHAP include benzene, 1,3 butadiene, toluene, naphthalene, hexane, and xylene. The proposed standards regulate emissions of these compounds, as well as other incidental organic HAP that are emitted during the manufacture of ethylene.

#### 2. What Are the Health Effects Associated With the HAP Emitted?

The data available to us indicate that the primary HAP emitted by ethylene manufacturing are benzene and 1,3 butadiene. Emissions of benzene and 1,3 butadiene are more than 80 percent of the total HAP emissions from the manufacture of ethylene/propylene. The HAP that would be controlled with today's proposed NESHAP are associated with a variety of adverse health effects.

*Benzene.* Acute (short-term) exposure to benzene in air can cause dizziness, headaches, and unconsciousness. Exposure to high levels of benzene can result in death. Lower concentrations may irritate the skin, eyes, and lungs. Chronic (long-term) exposure to benzene in occupational settings has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in workers exposed to benzene. The EPA has classified benzene as a Group A, known human carcinogen.

*1,3 butadiene.* Acute inhalation of 1,3 butadiene results in irritation of the eyes, nasal passages, throat, and lungs, and causes neurological effects such as blurred vision, fatigue, headache, and vertigo. Epidemiological studies have reported a possible association between chronic 1,3 butadiene exposure and cardiovascular diseases. Animal studies have reported the development of tumors following inhalation exposure to 1,3 butadiene. The EPA has classified 1,3 butadiene as a Group B2, probable human carcinogen.

The effects of these HAP vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (*e.g.*, presence of pre-existing disease), and lifestyle. To the extent the adverse effects do occur, the proposed NESHAP will substantially reduce emissions and exposures to the level achievable with MACT. The seriousness of risks remaining after impositions of the final MACT standards will be examined at a later date, as provided for under section 112(f) of the CAA.

### *B. Summary of Proposed Standards for Ethylene Production*

#### 1. What Is the Source Category To Be Regulated?

There are 37 ethylene production plants operating in the United States. We estimate that 30 or more facilities are major sources. The proposed NESHAP apply to all major sources that produce ethylene. Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source. Area sources are not subject to the proposed NESHAP.

The Ethylene Production source category includes any facility which manufactures ethylene as a primary product or an intermediate product. Ethylene is produced by either a pyrolysis process (hydrocarbons subjected to high temperatures in the presence of steam) or by separation from a petroleum refining stream. The ethylene production process includes the separation of ethylene from associated streams such as product made from compounds composed of four carbon atoms (C4), pyrolysis gasoline, and pyrolysis fuel oil. The ethylene production process does not include the manufacture of synthetic organic chemicals, such as the production of butadiene from the C4 stream and aromatics from pyrolysis gasoline. Propylene is often produced as a product during the ethylene production process, but the separation of propylene from a refinery gas stream does not in itself cause the process unit or the equipment used for the separation to be included in this source category.

In addition to ethylene and propylene, other products from an ethylene manufacturing process unit (EMPU) may include, but are not limited to: (1) Hydrogen and methane containing streams, (2) ethane and propane streams, (3) mixed C4+ pyrolysis products, (4) pyrolysis fuel oil, and (5) specialty products such as acetylene and methylacetylene-propadiene. For purposes of discussion in this preamble, the term ethylene will be used to describe the source category and the associated process unit equipment even though other products, such as propylene, may be produced in addition to and in greater or lesser quantities than ethylene.

#### 2. What Is the Affected Source?

We have defined the affected source to include each EMPU, along with associated process equipment (including storage vessels, process vents, transfer racks, waste streams, piping, and heat exchange systems) located at a plant site that is a major source as defined in section 112(a) of the CAA. The affected source does not include associated equipment that does not contain HAP, stormwater from segregated sewers, water from firefighting and deluge systems in segregated sewers, water from testing deluge systems, water from safety showers, spills, storage vessels and transfer racks that contain organic HAP as impurities, or vapor balancing transfer equipment. We define EMPU as a process unit specifically utilized for the production of ethylene/propylene including all separation and purification processes. The affected source does not include pieces of equipment currently included in other source categories.

#### 3. What Are the Emission Limits, Operating Limits, and Other Standards?

The following discussion briefly summarizes the proposed control requirements for the affected emission types.

a. *Equipment leaks.* The equipment leak emission type represents emissions from specific components within the ethylene manufacturing process. These components include pumps, compressors, pressure relief devices, gas valves, light liquid valves, heavy liquid valves, and connectors. For equipment containing or contacting HAP in amounts of 5 percent or greater, HAP emissions are required to be controlled through the implementation of LDAR program for affected equipment. Monitoring frequency is based on the percent of leaking equipment. Requirements are the same for both existing and new sources.

b. *Process vents.* For process vents from continuous unit operations having an average flow rate greater than or equal to 0.008 standard cubic meters per minute (scmm) and an average HAP concentration of 30 ppmv or greater, HAP emissions are required to be controlled by routing emissions through a closed vent system to one of the following: (1) A flare, or (2) an enclosed combustion device that reduces HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Recovery devices can be used in certain situations to meet the 98 weight-percent reduction or 20 ppmv requirement. Requirements are the same for both existing and new sources.

c. *Storage Vessels.* For storage vessels storing liquid containing HAP and having a vapor pressure greater than or equal to 3.4 kilopascals (0.5 pounds per square inch absolute (psia)) but less than 76.6 kilopascals (11.1 psia), requirements are based on capacity. For storage vessels with capacity greater than 4 cubic meters (1,000 gallons) but less than 95 cubic meters (25,000 gallons), HAP emissions are required to be controlled by filling the vessel through a submerged pipe or by complying with the requirements for storage vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons). For storage vessels with capacity of 95 cubic meters (25,000 gallons) or more, HAP emissions are required to be controlled by equipping the vessel with an internal floating roof or external floating roof with seals and controlled fittings or by routing emissions through a closed vent system to a flare, a fuel gas system or process, or a control device that reduces HAP emissions by 95 weight-percent. Vessels storing materials with vapor pressures of 11 psia or greater must be equipped with a closed vent system routed to a flare or control device that reduces HAP emissions by 95 weight-percent. Requirements are the same for both existing and new sources.

d. *Transfer Racks.* For transfer racks loading 76 cubic meters (20,000 gallons) or more per day of HAP-containing material (averaged over any consecutive 30-day period) and having a vapor pressure greater than or equal to 3.4 kilopascals (0.5 psia), HAP emissions are required to be controlled by equipping the transfer rack with one of the following: (1) A closed vent system designed to collect the regulated material displaced during loading and route it to a flare or other control device that reduces HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or (2) process piping designed to collect the regulated material displaced during loading and route it to a process, a fuel gas system, or a vapor balance system. Requirements are the same for both existing and new sources.

e. *Heat Exchange Systems.* The HAP emissions from heat exchange systems occur when a leak in a heat exchanger allows HAP to be introduced to the cooling water and released when the cooling water is exposed to the atmosphere. The HAP emissions are required to be controlled by implementing procedures to monitor cooling water and repair equipment upon detection of a leak. Cooling water is monitored monthly for heat exchange systems at existing sources and weekly for heat exchange systems at new sources.

f. *Waste Operations.* To control emissions from waste streams, HAP in the stream must be reduced by 99 weight-percent or to 10 ppmv. The HAP reduction of 99 weight-percent must be achieved using suppression followed by steam stripping, biotreatment, or other treatment processes. Vents from steam strippers and other waste management or treatment units are required to be controlled by a control device achieving 98 weight-percent emission reduction or 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions) at the outlet of the control device. The term ''waste'' includes wastewater streams. This term is used because the proposed 40 CFR part 63, subpart XX, references the Benzene Waste Operations NESHAP (BWON) for controlling emissions from wastes (including wastewater). Requirements are the same for both existing and new sources.

As discussed later in this preamble, the requirements for waste operations are based on the BWON. The BWON includes three compliance options in addition to the standard requirements. These compliance options are not included in the requirements for ethylene production sources. The BWON compliance options set limits based on a total annual benzene (TAB) quantity. Because the requirements for ethylene production sources are for controlling HAP emissions, requirements including a TAB quantity would not be appropriate. We do not have adequate data to convert the TAB limits into HAP emission limits. Additionally, calculation of such a quantity is a complicated and time-consuming process. In complying with the BWON, a TAB quantity is calculated regardless of the compliance option selected because a TAB quantity is used to determine overall applicability of the BWON. No such quantity is needed for the ethylene production waste requirements because they apply to all ethylene production sources located at major sources. Excluding the compliance options simplifies the requirements for ethylene production sources by not requiring a TAB or a HAP-based quantity to be calculated.

4. What Are the Testing, Monitoring, Inspection, Recordkeeping and Reporting Requirements?

The testing, monitoring, inspection, recordkeeping, and reporting requirements specified in the proposed NESHAP are used to assure and document compliance with the standards. The testing, monitoring, inspection, recordkeeping, and reporting requirements included in the proposed NESHAP are based on such requirements that we previously developed for sources similar to those for which standards are being proposed today. The testing, monitoring, inspection, recordkeeping, and reporting requirements for each emission type are based on those in the Petroleum Refineries NESHAP, the BWON, the HON, and/or other rules as appropriate. These testing, monitoring, inspection, recordkeeping, and reporting requirements are the same as the generic standards for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subparts TT and UU); and process vents (40 CFR part 63, subpart SS).

As discussed later in this preamble, the proposed 40 CFR part 63, subpart XX, specifies that monitoring of HAP concentration in waste streams after treatment or process parameters that indicate proper operation of treatment

systems must be conducted continuously. Facilities that currently perform concentration monitoring of waste streams do so on a monthly basis as required by the BWON. We do not believe that monthly concentration monitoring is sufficient to ensure continuous compliance. Rules developed under section 112 of the CAA include monitoring strategies that incorporate the concepts of enhanced monitoring that were established in section 114(a)(3) of the CAA. This approach is designed to ensure that monitoring procedures developed for section 112 standards provide data that can be used to determine compliance with applicable standards, including emission standards on a continual basis. Since the waste requirements of the proposed 40 CFR part 63, subpart XX, primarily refer to provisions in 40 CFR part 61, subpart FF, that were developed prior to the CAA Amendments, the provisions do not ensure that monitoring data are available to prove compliance on a continual basis in all cases. Therefore, today's proposal requires either continuous monitoring of HAP concentration of the waste stream exiting the treatment process or continuous monitoring of process parameters for the waste treatment process/unit that would indicate proper system operation. Facilities that comply with the monitoring requirements of the proposed 40 CFR part 63, subpart XX, are not required to comply with the monitoring requirements of the BWON.

5. What Are the Startup, Shutdown, and Malfunction Requirements?

The startup, shutdown, and malfunction requirements included in the proposed NESHAP are, where appropriate, based on startup, shutdown, and malfunction requirements developed for the part 63 General Provisions and previously incorporated in 40 CFR part 63, subpart YY. Subpart YY requires that minimization of emissions from startup, shutdown, and malfunctions be addressed in a startup, shutdown, and malfunction plan. The plan must also establish reporting and recordkeeping of such events. The existing startup, shutdown, and malfunction requirements have been reviewed and were determined to be appropriate for ethylene production sources.

Also, during development of the proposed NESHAP, we determined that decoking is a shutdown activity and will be addressed through a facility's startup, shutdown, and malfunction plan. The decoking process is similar to other shutdown activities as defined in subpart YY. Including decoking in a facility's startup, shutdown, and malfunction plan will require owners and operators of an EMPU to include procedures for decoking that will minimize emissions. By including decoking as a shutdown activity, owners and operators will be afforded flexibility in addressing decoking emissions while ensuring that they will be minimized.

6. How Are the Proposed NESHAP Related to Other Rules?

We recognize that the potential exists for regulatory overlap between the proposed NESHAP and other rules previously developed under the CAA. Therefore, we have clarified the applicability of 40 CFR part 63, subpart YY, as it relates to other 40 CFR parts 60, 61, and 63 rules that apply to ethylene production sources in the general applicability section of the proposed NESHAP (§ 63.1100). Areas of overlap may occur with other NESHAP applicable to storage vessels, process vents, transfer operations, and equipment leaks, such as 40 CFR part 60, subparts Ka, Kb, VV, NNN, and RRR; 40 CFR part 61, subpart V; and 40 CFR part 63, subpart G.

The requirements for equipment leaks, storage vessels, process vents, and transfer racks are similar to the requirements for these emission types under both the HON and the Petroleum Refineries NESHAP. Thus, we expect that most ethylene manufacturing facilities are currently implementing many of the proposed requirements for a process unit at the plant site, which will lessen the burden to owners and operators. In addition, the proposed monitoring, recordkeeping, reporting, and testing requirements are also similar to those required by the HON and the Petroleum Refineries NESHAP.

Further, the proposed NESHAP reference several other subparts which have established requirements for equipment leaks, storage vessels, process vents, and waste operations. We made the decision to reference other subparts in order to expedite the rulemaking process and to encourage standardization of requirements for facilities subject to numerous NESHAP. It is not our intent to broadly apply standards that have been promulgated previously by the Agency without thorough consideration of the appropriateness of such an approach. We determined the appropriate standards for each emission type at ethylene manufacturing facilities prior to making the decision to reference other subparts for emission control standards.

*C. Rationale for Selecting the Proposed Standards for Ethylene Production*

1. How Did EPA Select the Source Category?

In the early listing of source categories, we intended to regulate ethylene processes with the SOCMI. We did not do this because we had insufficient data to support that ethylene processes and SOCMI processes were similar sources for MACT determination. The ethylene processes were, therefore, specifically not covered by NESHAP for the SOCMI source category (HON). Consequently, we listed ethylene processes as a separate category of major sources of HAP on June 4, 1996 (61 FR 28197).

2. How Did EPA Select the Affected Source?

We determined the affected source by first recognizing that ethylene manufacturing processes generally exist as a follow-on chemical process to petroleum refining and as a precursor to the production of other chemicals, most of them SOCMI chemicals. Concerned about overlap, we considered the combination of equipment used in the manufacture of ethylene, and the associated by-products and co-products, as the subject of this proposal, from the point at which feed stocks from refinery processes are received by an EMPU to the point where chemical product streams are either received by a unit covered by another MACT standard, like the HON, or leave the manufacturing site as product or waste. Not all streams in the affected source contain HAP, and the primary products of the EMPU are typically ethylene and propylene, neither of which are HAP. Hence, not all streams required control, only those containing HAP. To simplify the process of determining where to apply controls, the following emission types (*i.e.*, emission points) were identified as the sources of emissions within the EMPU: Equipment (including pumps, compressors, pressure relief devices, valves, and connectors); storage vessels; transfer racks; process vents; heat exchange systems; and waste operations. We also identified pyrolysis furnaces and decoking operations, but there are no specific control requirements for these two emission types.

3. How Did EPA Determine the Basis and Level of the Proposed NESHAP for Existing and New Sources?

We are aware of 36 existing facilities in this source category, 31 of which are located in just two States, Texas and Louisiana. Although we surveyed only

11 of the facilities in Texas and Louisiana, the MACT levels of control were relatively predictable and largely driven by existing State programs.

For this source category, the selection of the best performing facilities upon which to determine the MACT floor used a point value approach, whereby the floor decisions were driven by the facilities that have the best LDAR program for equipment leaks. The information we collected indicates that equipment leaks are the largest source of HAP emissions at ethylene affected sources.

To determine the existing MACT floor using the point value approach, it was necessary to determine the emission limitations achieved by the best performing 12 percent of sources (*i.e.,* five facilities) in the ethylene manufacturing industry. The five best performing facilities were determined on a facilitywide basis. For each emission type (equipment leaks, storage vessels, waste operations, heat exchange systems, process vents, and transfer racks), information on the control devices and emission reduction techniques in place at each facility was used to identify the most controlled sources. A ''point system'' was used to rank the facilities in order of most to least controlled. Facilities received points for each emission type for which they were among the best controlled. The points received for an emission type were weighted based on the relative contribution to total emissions to reflect the impact that control of the emission type has on the total emissions from a facility. All points for a facility were totaled. The facilities with the five highest point totals are considered to be the best performing overall sources.

After we identified the top five performing sources, we used the information on the emission reduction techniques and control devices in place at those facilities to determine the ''average'' emission limitation achieved for each emission type. For each emission type, the five best performing facilities were ranked, in order of emission limitation achieved. The MACT floor for existing sources is the emission limitation achieved by the median facility. For EMPU emission types, determining the median reduction achieved, rather than the arithmetic mean, was found to be the most appropriate approach, since the median is associated with specific control technologies. The MACT floor for new sources is the emission limitation achieved by the best performing facility.

Although the five best performing facilities were determined on a facilitywide basis, it is important to note that this analysis does not result in a facilitywide level of emission reduction that is being achieved by the best performing sources. Adequate information, specifically data on emissions before control techniques are applied, is not available to estimate facilitywide emissions reductions. It is unlikely that an accurate measure of the emission limitations achieved could be made. It is even less likely that such a limit could be used as the basis for a rule. Typically, MACT rules refer to a control device or practice as the basis of the standards because the MACT floor and MACT must be technically achievable. This would not be possible if an estimated facilitywide emission reduction was used as the basis for the standards. Additional information on selection of the five best performing facilities and documentation on the MACT floor methodology and determination of MACT is included in Docket No. A–98–22.

As a check against whether we had properly identified the appropriate MACT floor level of control for the other HAP emission source types (*i.e.,* storage vessels, process vents, wastewaters, cooling water, and furnaces), we then independently evaluated the best level of performance for each emission type. In other words, we performed a cursory analysis using the ''plank-type'' approach in determining the floor for these other emission types, as described in the preamble of the HON (59 FR 19402, April 22, 1994). We did not need to reevaluate equipment leak best performers since our point value approach already emphasized best performing LDAR programs.

To further verify that we had made the right floor selections, we visited the Texas Natural Resources Conservation Commission to review the permits for the facilities in Texas and were able to confirm that the Texas facilities among the 11 surveyed are the best performing facilities in Texas. We also found that the levels of controls for all of these emission source types were a function of compliance with either Texas or Louisiana permit conditions, NSPS for Air Oxidation and/or SOCMI Distillation (40 CFR part 60, subparts III and NNN), or the Benzene Waste NESHAP (40 CFR part 61, subpart FF). Since the best performing sources within each emission source type that we identified through the point value approach were the sources complying with the most stringent applicable State or Federal requirements, we concluded that we would arrive at the same MACT floor level of control for each emission source type through either the point value approach or through the ''plank-type'' approach. A detailed discussion of the determination of the MACT floor and MACT for each emission type follows.

a. *Process Vents.* To establish the MACT floor for process vents, we determined both the level of control required and the vents to which control must be applied. All vents at the best performing facilities are being controlled using a flare or other combustion device. It is generally accepted that combustion devices achieve a 98 weight-percent reduction in HAP emissions; therefore, this is the MACT floor level of control for both new and existing sources.

Only two of the best performing facilities reported having any process vents, and the volumetric flow rates and HAP concentrations of the vents are not known. The information available was supplemented with information from the regulations and the permit condition with which the two facilities are complying in order to determine the applicability criteria for control. These requirements include: Texas regulation 30 Texas Air Control (TAC) Chapter 115 Subchapter B; 40 CFR part 60, subparts NNN and RRR. These regulations and the applicable permit condition all require the same level of control: Reduction of organic compounds by 98 weight-percent or to a concentration of 20 ppmv. The only differences in the applicable requirements are the cutoffs for determining whether control is required.

Both facilities that reported having vents are subject to the Texas regulation, whereas only one facility is subject to the requirements of 40 CFR part 60, subparts NNN and RRR. Therefore, the requirements of the Texas regulation are considered to represent the median level of control. The Texas regulation provides both a VOC concentration and flow rate cutoff for vents that must be controlled. The regulation requires that vents with a flow rate greater than or equal to 0.011 scmm and a VOC concentration greater than or equal to 500 ppmv must be controlled. Based on vent composition data provided by the surveyed facilities, approximately 10 percent of the VOC in process vent streams are HAP. Thus, we determined that the MACT floor for existing sources is to control process vents with a flow rate greater than or equal to 0.011 scmm and a HAP concentration greater than or equal to 50 ppmv by reducing HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental

combustion air is used to combust the emissions).

For new sources, the most stringent applicable regulation is the basis for the control applicability cutoffs. Subpart NNN requires vents with a flow rate greater than or equal to 0.008 scmm to be controlled. Subpart NNN of 40 CFR part 63 does not specify a concentration cutoff, but analysis of vents that are required to be controlled based on the total resource effectiveness index indicated that vents with TOC concentrations less than 300 ppmv are not likely to be required to be controlled (see the memorandum ''Process Vent Applicability Criteria'' in the Consolidated Federal Air Rule Docket A–96–01 for a discussion of this analysis). Because it is assumed that TOC content is approximately equal to VOC content for ethylene vents and that 10 percent of the VOC in these process vent streams are HAP, the MACT floor for new sources is to control process vents with a HAP concentration greater than or equal to 30 ppmv and a flow rate greater than or equal to 0.008 scmm by reducing HAP emissions by 98 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions).

More stringent applicability cutoffs for control of process vents were considered in identifying above-the-floor options for both new and existing sources. One option more stringent than the MACT floor for new sources is to lower the flow rate control applicability criteria to 0.005 scmm as used in the HON. This cutoff is not significantly different than the new source MACT floor cutoff. Considering that there are so few process vents at ethylene manufacturing facilities, it is unlikely that many additional vents would be controlled or that additional emissions reductions would be achieved by lowering the cutoff. Therefore, the applicability criteria for the new source MACT level of control are the same as the new source MACT floor level of control.

For existing sources, the control applicability criteria for the new source MACT were considered as an above-the-floor option. Because there are relatively few process vents at ethylene manufacturing facilities and the difference between the existing source MACT floor and new source MACT is so small, it is unlikely that many additional vents, if any, would be required to be controlled if the new source applicability criteria are used. Therefore, it is expected that there will be minimal to no difference in the cost of controls. We believe that the benefit of simplifying the proposed NESHAP by having the same control applicability cutoffs for process vents at new and existing sources greatly simplifies the requirements for vents and outweighs any additional cost. Thus, we determined that the process vent component of MACT is the same for existing sources as it is for new sources.

We do not have adequate data to prove this assumption and are soliciting comments and data to: (1) Support or refute the assumption that there are few vents with flow rates between 0.008 and 0.011 scmm and HAP concentrations between 30 and 50 ppmv, (2) aid in estimating the cost of controlling these vents if they do exist, and (3) support or refute that there is a benefit associated with simplifying the proposed NESHAP.

b. *Storage Vessels.* For storage vessel emissions, the five best performing facilities were ranked in order of the emissions reductions achieved through control equipment to determine the median facility. In establishing the storage vessel component of the MACT floor, we also determined the vessels to which controls would be applied.

It was not possible to construct the entire storage vessel component of the MACT floor based on the vessels at the median facility because it does not represent the full range of vapor pressures of stored materials or sizes of storage vessels. Additional information was obtained from applicable regulations and permit conditions. We determined that control requirements apply to storage vessels containing liquids with vapor pressures greater than or equal to 3.4 kilopascals (0.5 psia) and less than 76.6 kilopascals (11.1 psia). The level of control is based on storage vessel size. For storage vessels with capacities greater than 4 cubic meters (1,000 gallons) and less than 95 cubic meters (25,000 gallons), a submerged pipe must be used for filling the vessel unless more stringent controls are in place. For storage vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons), the following equipment comprises the MACT floor at existing sources:

- An internal floating roof (IFR), an external floating roof (EFR), or fixed roof with a closed vent system routed to a process, fuel gas system, or control device.
- If the vessel has an IFR, a mechanical shoe or liquid-mounted primary seal, or a vapor-mounted primary seal with a rim-mounted secondary seal.
- If the vessel has an EFR, a mechanical shoe or liquid-mounted primary and rim-mounted secondary seal.
- If the vessel has a vapor recovery system routed to a control device, the device must control HAP emissions by 95 weight-percent.
- Covers and gaskets on all access hatches, which are to be bolted.

The overall storage control efficiency for the two sources that perform better than the median facility was considered in determining the new source storage vessel component of the MACT floor. Storage vessels at the best performing facilities have the same control as the median facility except that all fittings on most of the storage vessels are controlled.

Requirements can be made more stringent than the existing source storage vessel component of the MACT floor by requiring controls that achieve a higher control efficiency. We determined that for vessels with capacities greater than or equal to 95 cubic meters (25,000 gallons), the MACT level of control for existing sources is the MACT floor level of control with the addition of control for all fittings. This determination is based on a reasonable incremental cost effectiveness for the addition of controlled fittings. We determined that it is more cost effective to implement control of all fittings than it is to implement the storage vessel component of the MACT floor requirements alone. No options more stringent than the MACT floor for new sources were identified. Therefore, the MACT level of control for new sources is the same as the MACT level of control for existing sources.

c. *Transfer Racks.* Only one of the best performing facilities has transfer racks, and emissions are not controlled. Due to the limited amount of information available, it is not possible to address how transfer of different materials or at different rates would be controlled by the best performing facilities using only survey responses. For this reason, we supplemented the survey response data with information from an applicable State regulation. The control requirements of Texas regulation 30 TAC Chapter 115 Subchapter C, Volatile Organic Compound Transfer Operations, Loading and Unloading of Volatile Organic Compounds, would apply to four of the five best performing facilities if they transfer materials having vapor pressures and at rates that meet or exceed the control applicability cutoffs of the proposed NESHAP.

Subchapter C requires control of loading greater than or equal to 20,000 gallons per day of VOC with a true vapor pressure greater than or equal to

0.5 psia. Loading racks meeting the control requirement applicability threshold are to be controlled with a vapor recovery system that achieves a 90 percent recovery or a vapor balancing system that maintains a pressure equal to or greater than 1.5 psia. It is assumed that the efficiency achieved for VOC emission control is the same as the efficiency achieved for HAP control in the case of ethylene manufacturing transfer racks. Subchapter C also includes requirements for transport vessels, lines, and connection systems. Because four of the five facilities are subject to the requirements of subchapter C and none of them are subject to or are controlling to levels more stringent than subchapter C, we determined that the transfer rack component of the MACT floor for new and existing sources is the set of requirements included in subchapter C.

One above-the-floor option for existing sources is requiring a greater reduction in emissions. The HON and 40 CFR part 61, subpart BB (Benzene Transfer Operations NESHAP), require 98 weight-percent control of HAP emissions from transfer racks. We determined it is appropriate to require more stringent control, specifically 98 weight-percent control of HAP emissions or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Because an EMPU is either equipped with a flare or has access to a common flare, if a facility decides to equip transfer racks with a closed vent system and a control or recovery device, the most cost-effective option would be to route emissions to an existing flare. This is supported by the fact that all transfer racks at ethylene manufacturing facilities that we estimate are controlled use a flare as a control device. Routing emissions to the flare would not cost more than routing emissions to another control device and would cost less than constructing a new control or recovery device. It is generally accepted that flares achieve a 98 weight-percent reduction in HAP emissions. Since emissions can be reduced by 98 weight-percent at the same cost as reducing them by 90 weight-percent, we have determined that the appropriate MACT level of control for existing sources is 98 weight-percent reduction in HAP emissions (if a closed vent system and control device are used) or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). The same logic applies to new sources. The least expensive control option for a new source would be to route transfer emissions to an existing flare or new flare that must be constructed anyway. Therefore, the MACT level of control for new sources is the same as the level of control for existing sources.

d. *Waste.* According to the survey responses, all of the best performing facilities are controlling to comply with the requirements of the BWON. Therefore, the MACT floor for both new and existing sources is based on the control level achieved at the best performing facilities. Although the purpose of the BWON is to control benzene emissions, the control technologies in use to comply with the BWON also result in the control of other HAP. Based on data received in the survey responses, waste streams from each EMPU that contain benzene also contain other HAP, primarily 1,3-butadiene, cumene, ethyl benzene, hexane, naphthalene, styrene, toluene, and xylene. These HAP are similar to benzene in solubility and volatility. Therefore, we expect that these HAP are controlled to a similar level as benzene by management and treatment of the waste streams.

The treatment requirements of the BWON require removal of benzene from the waste stream to 10 ppmw or by 99 weight-percent. For each closed vent system and control device used to comply with the requirements of the BWON, a benzene reduction of 98 weight-percent must be achieved. Because facilities controlling waste under the BWON are also achieving equal control of other HAP with physical properties similar to benzene, the control requirements of the MACT floor are the control requirements of the BWON for benzene as applied to total HAP. Thus, the waste component of the MACT floor requires removal of total HAP from the waste stream to 10 ppmw or by 99 weight-percent, and for each closed vent system and control device used to comply with the requirements of the proposed NESHAP, a total HAP reduction of 98 weight-percent must be achieved.

Today's proposed standards include control applicability cutoffs which are also based on the BWON. We considered whether the best performing facilities control all waste streams, and whether we could determine a HAP concentration cutoff and flow rate cutoff as part of the MACT floor. Generally, the BWON does not require management or treatment of waste streams containing less than 10 ppmw benzene or having a flow rate less than 0.02 liters per minute. We considered using the same cutoffs for the proposed NESHAP. However, facilities controlling waste for benzene are also achieving concurrent control of other HAP with physical properties similar to benzene. In addition, expressing the cutoff concentration in today's proposal as a benzene concentration could result in a cutoff that might exclude from control some waste streams that are similar in terms of HAP concentration as those being controlled at the floor. Since 10 ppmw benzene is approximately the same as 10 ppmw HAP for most of the waste streams, we are expressing the cutoff for the MACT floor as not requiring control of streams containing less than 10 ppmw total HAP or with a flow rate less than 0.02 liters per minute.

Finally, the BWON applies to facilities with a TAB quantity of 10 Mg/yr or greater. If a facility's waste streams have less than 10 Mg/yr benzene, the facility does not have to manage or treat waste to comply with the BWON. This cannot apply to MACT because MACT is a technology-based standard, and the MACT floor is based on the control technology performance for control of HAP at the best performing facilities. All of the best performing facilities are controlling HAP from waste streams. Therefore, the MACT floor level of control applies at each EMPU, regardless of the TAB. We have identified no rationale to support the subcategorization of waste operations based on the TAB.

One above-the-floor option is to have no control applicability cutoffs. We have determined that the emissions reductions that would be achieved by the management and treatment of all waste streams would result in considerably higher costs that cannot be justified.

Additional above-the-floor control options include more stringent management and treatment requirements. However, the management requirements of the BWON are already comprehensive and include all equipment used to transport waste. Similarly, the treatment requirements are quite stringent: removal of total HAP from the waste stream to 10 ppmw or by 99 weight-percent. We have not identified more stringent requirements for waste treatment. Therefore, we have determined that MACT for both new and existing sources is the MACT floor level of control.

e. *Heat Exchange Systems.* No control devices for cooling water were reported by the best performing sources. However, using the survey data, a relationship was found between HAP

emissions and how often a facility monitors cooling water for the presence of compounds that would indicate a leak. This relationship likely exists because once a leak is detected, actions are taken to repair the leak or take the leaking equipment out of service, thereby minimizing emissions from cooling water. Three of the five best performing facilities monitor monthly, one monitors weekly, and one reported using an on-line head space analyzer (a head space analyzer does not provide adequate indication of leaks to cooling water and was not considered in determining the heat exchange system component of the MACT floor).

We have determined that the heat exchange system component of the MACT floor for existing sources is a cooling water LDAR program that includes monthly monitoring because this is the frequency of monitoring at the median facility. The heat exchange system component of the MACT floor for new sources includes weekly monitoring because this is the most frequent monitoring performed.

One above-the-floor option is to require weekly monitoring at existing sources. Other above-the-floor options, which are not currently in place at any of the surveyed ethylene manufacturing facilities, are monitoring of the cooling water on a daily basis or monitoring continuously.

We have determined that the MACT levels of control are the floor levels of control for new and existing sources: a LDAR program with monthly monitoring for existing sources and weekly monitoring for new sources. Based on the information we have, the average monitoring frequency in practice by the best performing 12 percent of the affected sources is monthly. We found only one facility monitoring more frequently (weekly). Based on these findings, cost considerations and anticipated emissions reductions, we believe that, for existing sources, monthly monitoring is an adequate frequency to satisfy MACT.

If a leak is detected, repair is required to be completed within 15 calender days unless delay is required for reasons specified in the proposed standards. The time allowed for repair is consistent with the time allowed for repair for other leaking equipment at an EMPU, and we have determined that it is an appropriate amount of time to allow for repair to heat exchange equipment as well.

In addition to specifying the frequency of cooling water monitoring required, the proposed standards specify procedures for collecting and analyzing the samples. The test methods specified are based on the requirements of the HON which covers SOCMI sources having heat exchange system processes similar to ethylene production facilities. The requirements for where to obtain a cooling water sample are unique to an EMPU. Ethylene production requires a relatively high cooling water usage, approximately eight times that for a SOCMI unit. We are concerned that, due to the high total flow rate of cooling water, a leak in an EMPU would result in a concentration so low it would go undetected. To address this concern, we are requiring that cooling water be sampled at the inlet and outlet of each heat exchanger. This will ensure that the cooling water will be tested at the lowest possible flow rate, where leaks will be the least diluted. To reduce the burden that this requirement will cause, only heat exchangers used to cool fluids containing 5 percent HAP or greater are required to be tested. This is the same cutoff used to determine which components must be monitored as part of the LDAR program for equipment leaks.

f. *Equipment Leaks.* The equipment leak emission types include emissions from specific components (pumps, compressors, pressure relief devices, gas valves, light liquid valves, heavy liquid valves, and connectors) of the process. A method for estimating controlled and uncontrolled equipment leak emissions from facilities in the SOCMI was used to quantify the effectiveness of control strategies in use at the five best performing facilities. This method is described in the 1995 Protocol for Equipment Leak Emission Estimates (EPA document 453/R–95–017).

The median control effectiveness is achieved by control strategies at three of the five best performing facilities. These three control strategies are considered to represent the equipment leak component of the MACT floor for existing sources. The median is expressed as the control effectiveness achieved by control strategies at three facilities because the control effectiveness achieved by these facilities is equivalent. The control strategies used by the three median facilities include an LDAR program that requires monitoring of valves, connectors, and in some cases compressors, pumps, and pressure relief devices. Emissions from compressors, pumps, and pressure relief devices that are not monitored are routed to control devices. The level of emissions used by the facilities to indicate a leak is 500 ppmv.

Review of control strategies in use, permit requirements, and regulations for similar sources did not reveal any equipment leak control strategies more stringent than the MACT floor for existing sources. This is not unexpected considering the stringency of the MACT floor at existing sources. The equipment leak portion of the MACT floor requires all components to be monitored or controlled, so no additional components could be added to the requirements. The leak definition of the floor, 500 ppmv, is the lowest used in the ethylene manufacturing industry, with one exception. One facility is using a 300 ppmv leak definition. We do not have adequate data to determine how emissions would be impacted by using a leak definition of 300 ppmv rather than 500 ppmv. The Protocol for Equipment Leak Emission Estimates document (EPA–453/R–95–017) does not include emission factors for leak definitions less than 500 ppmv. Due to the level of accuracy of the sampling and testing methods and the relatively small difference in leak definitions, the difference in emissions is likely to be minimal. We have not identified any options more stringent than the equipment leak floor component for existing sources. Therefore, the MACT level of control for equipment leaks at new and existing sources is based on the floor level of control for existing sources.

g. *Furnaces.* Typically, the ethylene production process involves converting large hydrocarbon molecules into smaller molecules through a process referred to as ''thermal cracking.'' This takes place in the ethylene cracking furnace. Based on information provided in survey responses, the furnaces are fired with natural gas, refinery gas, off-gas from the production process, or a combination of the three. Ethylene cracking furnaces are expected to have relatively low HAP emissions. The fuels burned in cracking furnaces contain relatively little HAP, and most organic HAP are destroyed in the combustion process. In fact, process heaters are used as control devices for process vents containing HAP. We decided to consider standards for gas-fired process heaters because HAP emissions can result from incomplete combustion, and natural and refinery gas combustion has been shown to result in emissions of formaldehyde. Ethylene cracking furnaces could have been included in separate MACT standards that are currently being considered for process heaters. However, we decided to include cracking furnaces in the proposed NESHAP for ethylene manufacturing in order to establish comprehensive MACT standards that

cover all of the HAP emission types within an ethylene manufacturing process unit.

None of the surveyed facilities reported controlling HAP emissions from furnaces using an add-on control device. In addition to add-on controls, we considered control techniques that may minimize HAP emissions. As combustion destroys most organic HAP, it is assumed that those furnaces operated with optimal combustion conditions would have the lowest HAP emissions. One difficulty in pursuing a level of good combustion as a regulatory requirement is in determining a parameter that accurately indicates good combustion. Excess oxygen has been suggested as a parameter that indicates whether good combustion is being achieved. Based on survey responses and discussions with industry representatives, the majority of ethylene furnaces are equipped with monitors for excess oxygen. At least one facility has automatic controls for excess oxygen. Generally, excess oxygen is monitored to ensure that adequate oxygen is available for combustion, and that efficient combustion is being achieved. Oxygen levels may also be monitored to ensure that they do not exceed a level that would result in excessive $NO_X$ emissions. Because excess oxygen is typically controlled by closing and opening dampers by hand, it is not precisely controlled, but rather allowed to fluctuate within an acceptable range. There is no evidence to suggest that any of the facilities have determined the relationship between excess oxygen and HAP emissions. Theoretically, three different furnaces, one with automatic excess oxygen controls, one with an excess oxygen monitor without automatic controls, and one without excess oxygen monitors could have the same level of HAP emissions because none of them are being operated to specifically control HAP emissions. Data are not available to determine whether HAP emissions reductions are actually being achieved by facilities monitoring and/or controlling excess oxygen. Therefore, we cannot require the use of excess oxygen monitors for controlling HAP emissions from ethylene cracking furnaces.

Further, we have not identified any add-on controls or control techniques currently in use to control HAP emissions from ethylene cracking furnaces. The MACT floor for ethylene cracking furnaces is no control, and there are no known above-the-floor options. Thus, although ethylene cracking furnaces were considered in developing the proposed NESHAP, no regulatory requirements for them are included.

h. *Decoking.* Coke is periodically removed from the coils within an ethylene cracking furnace through a process referred to as ''decoking.'' During the decoking process, the furnace is isolated from the rest of the ethylene manufacturing process, and steam is used to strip the coke from the coils. The steam, products of combustion, and coke that exit the furnace coils are typically cooled, either with quench water or in a heat exchanger. Water and coke particles are removed with a knock-out pot or other mechanical control device. The resulting water stream is routed back into the process or is discarded. The non-condensed stream is emitted to the atmosphere or in some cases, routed into the furnace firebox.

None of the facilities that received the section 114 survey reported having any test data for emissions from coke combustion. We were not able to locate any test data or published emission factors for coke combustion. There are reasons to believe HAP emissions from decoking are relatively low. It is not likely that the coke contains much volatile material, and volatile material should be destroyed during the combustion phase of the decoking process. However, the conditions within the coils are not expected to be conducive to good combustion, which may result in volatile material not being destroyed. Additionally, HAP emissions may be created in the decoking process. Another reason that it is important to consider emissions from decoking is the frequency with which it occurs. A typical furnace may be decoked between 8 and 12 times per year. A typical ethylene unit may comprise eight furnaces. Assuming a decoke lasts 36 hours, a typical ethylene unit may have a decoke of one of its furnaces occurring 40 percent of the time.

Due to the potential for HAP emissions and the frequency of decoking, we believe that it is necessary to address decoking in the proposed NESHAP. We have determined that decoking is a shutdown activity and will, therefore, be addressed through a facility's startup, shutdown, and malfunction plan. The definition for a shutdown in the proposed NESHAP includes ''the cessation of operation of a regulated source and equipment required or used to comply with this subpart * * * for purposes of * * * periodic maintenance * * *.'' During decoking, the cracking process ceases in order to allow the furnace to be decoked, which is essentially a maintenance activity. Defining decoking as a shutdown activity requires decoking operations to be included in a facility's startup, shutdown, and malfunction plan. This will require owners and operators of ethylene units to include in their plan procedures for decoking that will minimize emissions. This requirement is not expected to be burdensome to owners and operators as it is expected that most facilities already have written decoking procedures.

Although it has been determined that the most appropriate way to address decoking is to consider it a shutdown activity, we reviewed information available to determine if it would be possible to establish a MACT emission limit for decoking. In the survey responses, two facilities reported routing decoking emissions from all furnaces to the furnace firebox. This technique may control HAP emissions from decoking, if there are any. However, its effectiveness is unknown. We are not aware of any test data for emissions before or after routing through the furnace firebox. Based on the information available, if a MACT analysis were performed for decoking, it is likely that the floor level of control would be no control. Routing emissions to the firebox could be considered as an above-the-floor option. However, it would be difficult to evaluate this option because its effectiveness is unknown. The results of the review of information available for decoking confirmed our decision to regard decoking as a shutdown activity.

In addition to air emissions resulting from decoking operations, it is also possible that HAP may be present in the condensate stream that results when the steam, products of combustion, and coke are cooled and condensed. If the condensate stream is not recycled into the process and is discarded, it will be covered under the waste requirements that are also proposed today. Therefore, all possible sources of emissions from decoking operations are covered by the proposed NESHAP.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts YY, SS, TT, UU, and WW, to demonstrate and document compliance with the proposed NESHAP for ethylene production. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources

similar to those being proposed for the Ethylene Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (§§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These requirements are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.*, HAP concentration cutoff level, above which, control is required).

We selected emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirements in subparts promulgated for storage vessels (40 CFR part 63, subpart WW); equipment leaks (40 CFR part 63, subpart UU or TT); and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous HAP.

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of subparts YY, SS, TT, and UU are appropriate for demonstrating and documenting compliance with the requirements proposed for the Ethylene Production source category. This is because these requirements were established for standards with similar form, and similar emission points with pollutant streams of gaseous HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

*D. Summary of Environmental, Energy, Cost, and Economic Impacts*

1. What Are the Air Quality Impacts?

We estimate that the proposed NESHAP will decrease HAP emissions by 992 Mg/yr (1,090 TPY) (a 60 percent reduction) and decrease VOC emissions by 9,271 Mg/yr (10,188 TPY) (a 64 percent reduction).

2. What Are the Cost Impacts?

The cost of implementing the control techniques is expected to vary widely between ethylene manufacturing facilities. The cost of control techniques for some facilities will be minimal because they already have in place the work practices, equipment, and control devices required to comply with the proposed NESHAP. The highest costs will be incurred by facilities that are not currently complying with the BWON and will have to add waste management and treatment equipment to comply with the proposed NESHAP. We estimate the average cost of controls for these facilities to be $1.03 million. For facilities that already have waste management and treatment equipment, we estimate the average cost to be $7,600.

3. What Are the Economic Impacts?

The economic impact analysis for the proposed NESHAP for ethylene production shows that the annual compliance costs are less than 0.01 percent of the sales for the 22 affected firms. In fact, seven firms are expected to experience small savings in costs as a result of implementing the proposed NESHAP. Therefore, no adverse impact is expected to occur for these firms in the ethylene manufacturing industry. Estimation of the cost and economic impacts of the proposed NESHAP is detailed in memoranda included in the docket for the proposed NESHAP (Docket No. A–98–22).

4. What Are the Nonair Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse nonair health, environmental, or energy impacts associated with the proposed NESHAP for the Ethylene Production source category. This is based on the types of control techniques expected to be used to comply with the proposed NESHAP. The majority of control techniques are either work practices, such as an LDAR program for equipment leaks and cooling water; or equipment standards, such as floating roofs for storage vessels which do not cause increases in water pollution; or solid waste. Because most of the control techniques expected to be used to comply with the proposed NESHAP are either work practices or equipment standards, minimal increases in energy use are expected.

*E. Solicitation of Comments*

Representatives of the ethylene industry have reviewed our MACT floor approach and suggested that the MACT floor should not include connector monitoring. Industry does not refute that facilities are complying with State requirements for connector monitoring, or that the best performing facilities are those with the most stringent LDAR programs. However, industry believes the emissions from connectors are inflated due to the fact that we rely upon the SOCMI emission factors, which they believe are not appropriate for connectors in the ethylene industry. Industry representatives have submitted data to support their position that emissions from connectors are very low and, therefore, routine connector monitoring at ethylene facilities does not result in reduced emissions. Industry has concluded that the use of different ethylene industry-derived emission factors for connectors would mean that the determination of the best performing 12 percent of facilities would not be as heavily influenced by connector emissions as it is in our analysis. They suggest that a different set of five facilities (equivalent to the best performing 12 percent of facilities) would be among the best performers than the five facilities upon which the MACT floor for this proposal was determined.

The data provided by industry, along with correspondence from industry representatives and summaries of stakeholder meetings have been placed in the docket (Docket No. A–98–22). We are soliciting comment on these data and industry's conclusions. We did not receive industry's data in time for evaluation prior to this proposal.

We are also soliciting comments and data to support the determination of the process vent component of the MACT for existing sources. The MACT floor level of control for existing sources requires that vents with flow rates greater than or equal to 0.011 scmm and HAP concentrations greater than or equal to 50 ppmv must be controlled to reduce HAP emissions by 98 weight-percent or to 20 ppmv. An above-the-floor option considered is to require vents with flow rates greater than or equal to 0.008 scmm and HAP concentration of 30 ppmv or greater to be controlled. This option is based on 40 CFR part 60, subpart NNN—Distillation Operations NSPS, which applies to one of the best performing facilities and is the same as the process vent component of the MACT for new sources. We do not have data to assess the cost effectiveness of lowering the control applicability cutoffs for existing sources, but we believe the cost would be minimal because there are relatively few process vents, and the cutoffs being considered are so similar to the MACT floor. Additionally, having the same cutoffs for new and existing sources would simplify compliance with, and enforcement of, the proposed NESHAP. We are soliciting comments and data to:

(1) Support or refute the assumption that there are few vents with flow rates between 0.008 and 0.011 scmm and HAP concentrations between 30 and 50 ppmv, (2) aid in estimating the cost of controlling these vents if they do exist, and (3) support or refute that there is a benefit associated with simplifying the proposed NESHAP by having the same requirements for vents at new and existing sources.

We are also soliciting comments on the monitoring requirements for heat exchangers. The proposed standards require that cooling water samples must be collected at the inlet and outlet of each heat exchanger that cools process fluids with 5 percent HAP or greater. An alternative option that was considered would allow samples to be collected at the entrance and exit of each heat exchange system, or at locations where the cooling water enters and exits each heat exchanger, or any combination of heat exchangers as long as the cooling water flow rate at the sampling point does not exceed a specified value. We do not have data to determine the maximum flow rate to ensure that leaks will be detected with the test methods used. We are soliciting comments and flow rate data to support or refute the proposed requirements for sampling cooling water at EMPU heat exchangers. We are also soliciting comment to support or refute the assumption that the applicability criteria of 5 percent HAP is appropriate for determining which heat exchangers must be monitored for leaks.

## V. Spandex Production

### *A. Introduction*

#### 1. What Are the Primary Sources of Emissions and What Are the Emissions?

The HAP emission points covered by the proposed NESHAP include process vents, storage vessels, and fiber spinning lines. The HAP emitted from spandex production facilities include toluene and TDI. The proposed NESHAP would regulate emissions of these compounds, as well as other incidental organic HAP that are emitted during the manufacture of spandex fiber. The 1997 baseline HAP emissions estimate for the facilities using the reaction spinning process is 303 Mg/yr (334 TPY). The majority of these emissions are from process vents and fiber spinning lines.

#### 2. What Are the Health Effects Associated With the HAP Emitted?

The principle HAP associated with spandex production facilities is toluene; another HAP emitted in very small quantities is TDI.

*Toluene.* Effects on the central nervous system have been reported from acute (short-term) and chronic (long-term) exposure to toluene and include dysfunction, fatigue, sleepiness, headaches, and nausea. Reported effects from short-term high level exposures also include cardiovascular symptoms in humans. Additional long-term exposure effects include irritation of the eye, throat and respiratory tract. Studies of workers occupationally exposed and animals exposed in the laboratory have reported adverse affects on the developing fetus. Due to a lack of information for humans and inadequate animal evidence, EPA does not consider toluene classifiable as to human carcinogenicity.

*TDI.* Acute exposure to high levels of TDI can result in severe irritation of the skin and eyes and affects the respiratory, gastrointestinal, and central nervous systems. Chronic exposure of workers on the job has resulted in significant decreases in lung function and an asthma-like reaction characterized by wheezing, dyspnea, and bronchial constriction. Animal studies have reported significantly increased incidences of tumors of the pancreas, liver, and mammary glands from exposure to TDI via gavage (experimentally placing the chemical in the stomach). The EPA has not evaluated TDI for carcinogenicity, however, the International Agency for Research on Cancer has classified TDI as a possible human carcinogen.

### *B. Summary of Proposed Standards for Spandex Production*

#### 1. What Is the Source Category To Be Regulated?

The Spandex Production source category includes any facility that manufactures spandex fiber by the reaction spinning process. Spandex fiber is a long-chain, synthetic polymer comprised of at least 85 percent by mass of a segmented polyurethane. The spandex production process involves the reaction of a diisocyanate with a polyol (polyester or polyether glycol) to generate diisocyanate-terminated prepolymer. The prepolymer is extruded (or spun) while simultaneously reacting with a chain-extender in a spin bath to generate spandex fiber.

There are two spandex production facilities in the United States that use the reaction spinning process, and both are presently major sources. The proposed NESHAP would apply to any major sources that produce spandex fiber by reaction spinning. Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source. Area sources would not be subject to the proposed NESHAP.

In reaction spinning: (1) The spandex prepolymer is extruded into spinning baths containing HAP solvent, (2) the baths are covered with hoods and are open to the room air, (3) the hoods and room air are vented to an emission control device, (4) the spandex polymer is generated simultaneously with extrusion, (5) drying is a separate process step, and (6) there are large quantities of HAP emissions.

#### 2. What Is the Affected Source?

The affected source consists of all process vents, storage vessels, and fiber spinning lines that are associated with reaction spinning spandex production processes located at a major source of HAP emissions, as defined in 40 CFR part 63, subpart A.

#### 3. What Are the Emission Limits, Operating Limits, and Other Standards?

The following discussion briefly summarizes the proposed control requirements for the affected emission points.

a. *Process Vents.* For process vents, HAP emissions are required to be controlled by routing emissions through a closed vent system to one of the following: (1) A flare, (2) an enclosed combustion device that reduces HAP emissions by 95 weight-percent or to a concentration of 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions), or (3) a recovery device that reduces HAP emissions by 95 weight-percent or to a concentration of 20 ppmv. Requirements are the same for both new and existing sources.

b. *Storage Vessels.* Storage vessels with capacity greater than 47.3 cubic meters (12,500 gallons) that store materials with a maximum true vapor pressure of organic HAP greater than or equal to 3.4 kilopascals (0.5 psia) are required to control organic HAP emissions by using an external floating roof equipped with specified primary and secondary seals, by using a fixed roof with an internal floating roof equipped with specified seals, or by venting emissions through a closed vent system to a control device achieving 95 weight-percent control. Requirements are the same for both new and existing sources.

c. *Fiber Spinning Lines.* For fiber spinning lines, HAP emissions are required to be captured and vented through a closed vent system to a

control device achieving 95 weight-percent control or 20 ppmv (corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions). Requirements are the same for both new and existing sources.

4. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for emission points similar to those for which we are proposing NESHAP with this action.

For continuous compliance, you must install continuous parameter monitoring systems (CPMS) and conduct a performance evaluation of the CPMS. You must identify a relevant parameter that will indicate the control device is operating properly and then continuously monitor the selected parameter.

5. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you are subject to requirements under the Generic MACT standards subpart, you would be required to comply with general notification, recordkeeping, and reporting requirements.

You must submit one-time reports of the (1) start of construction for new facilities, (2) anticipated and actual start-up dates for new facilities, and (3) physical or operational changes to existing facilities. You are also required to maintain all records for a period of at least 5 years.

If you own or operate an affected source that has an initial startup date before the promulgation date of standards for that affected source under the Generic MACT standards subpart, you must submit a one-time initial notification. You must submit this notification within 1 year after the promulgation date of standards for an affected source under the Generic MACT standards subpart (or within 1 year after the affected source becomes subject to the Generic MACT standards subpart).

For sources constructed or reconstructed after the effective date of the relevant standards, the General Provisions require that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control that will be used for each potential HAP emission point.

The information in the Initial Notification and the application for construction or reconstruction will enable enforcement personnel to identify the number of sources subject to, or are already in compliance with, the standards.

You must also submit a Notification of Compliance Status report. You must have this notification signed by a responsible company official who certifies its accuracy and that the affected source has complied with the relevant standards. You must submit the results of any required performance tests (as applicable) as part of the Notification of Compliance Status report. You must submit the Notification of Compliance Status report within 60 days after the compliance date specified for an affected source subject to the Generic MACT standards subpart.

For CPMS, you must submit a report of the performance evaluation results to the delegated authority. You must also submit reports of parameter monitoring deviations and CPMS performance deviations to the delegated authority semiannually.

*C. Rationale for Selecting the Proposed Standards for Spandex Production*

1. How Did EPA Select the Source Category?

We listed Spandex Production as a category of major sources of HAP on July 16, 1992 (57 FR 31576). Today's proposed standards apply to reaction spinning processes only.

2. How Did EPA Determine the Affected Source?

The affected source is the combination of all regulated operations at a spandex production facility. The following regulated operations are typically performed at spandex production facilities and are part of the affected source: process vents, storage vessels, and fiber spinning lines. These are the typical operations found at spandex production facilities, and we determined MACT for these operations.

3. How Did EPA Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

There are two spandex production facilities in the United States that produce spandex fiber by reaction spinning; these facilities are owned by one company. Both are major sources as defined under section 112(a) of the CAA.

For a source category with fewer than 30 major sources, section 112(d)(3) of the CAA directs that the MACT floor be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source category is required to reflect the level of control being achieved by the best controlled similar source. In setting the MACT for spandex production using reaction spinning, we looked at the level of control presently in place at the two reaction spinning major source facilities.

At reaction spinning process spandex production facilities, there are a number of process vent streams containing HAP. The process vent types include vents associated with prepolymer reactors, dryers, and the solvent recovery system. The floor for process vents at reaction spinning processes requires 95 percent control by venting through a closed vent system to a control device. The two reaction spinning process facilities already have emission controls in place for process vents that are equivalent to those required by the Generic MACT NESHAP. We are not aware of any additional controls that would get further emissions reductions that would be more effective or reasonable for beyond-the-floor control for process vents. Therefore, MACT for process vents is the floor level of control.

The storage vessel control requirements in 40 CFR part 63, subpart WW, also called ''Level 2'' storage vessel controls, require the vessels to be equipped with a floating roof or covered and vented through a closed vent system to a control device. The two reaction spinning process facilities already have Level 2 emission controls on their storage vessels, and this level of control is considered to be the floor. We are not aware of any additional controls that would get further emissions reductions and be more effective or reasonable for beyond-the-floor control for storage vessels. Therefore, MACT for storage vessels at reaction spinning process spandex production facilities is the MACT floor.

During the fiber spinning step, HAP are volatilized from the spin bath solvent tanks, washing tanks, and the wet belt dryers. The solvent tanks, wash tanks, and wet belt dryers are covered with hoods and vented to an emission control device. There are also emissions into the room air, and room air is vented to an emission control device. At the two facilities in this source category, emissions from the fiber spinning lines are controlled by capture and subsequent routing to an emission control device. The floor for fiber spinning lines is capture of emissions around the spinning, washing and wet belt dryer areas of the spinning line and

venting to a control device that reduces HAP emissions by 95 weight-percent. We are not aware of any additional controls that would get further emissions reductions and be more effective or reasonable for beyond-the-floor control for fiber spinning lines. Therefore, MACT for fiber spinning lines is the floor level of control.

4. How Did EPA Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

We selected the monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts SS and WW, to demonstrate and document compliance with the spandex production standards. The procedures and methods set out in these subparts are, where appropriate, based on procedures and methods that we previously developed for use in implementing standards for emission point sources similar to those being proposed for the Spandex Production source category.

General compliance, monitoring, recordkeeping, and reporting requirements that would apply across source categories and affected emission points are contained within 40 CFR part 63, subpart YY (*i.e.,* §§ 63.1108 through 63.1113). We specify the applicability assessment procedures necessary to determine whether an emission point is required to apply control. These procedures are dependent on the emission point for which control applicability needs to be assessed and the form of the applicability cutoff selected for an individual source category (*e.g.,* a HAP concentration cutoff level, above which control is required).

We selected monitoring (including continuous monitoring), recordkeeping, and reporting requirements included under common control requirements in subparts promulgated for storage vessels (40 CFR part 63, subpart WW), and closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process (40 CFR part 63, subpart SS). These subparts contain a common set of monitoring, recordkeeping and reporting requirements. We established these subparts to ensure consistency of the air emission requirements applied to similar emission points with pollutant streams containing gaseous organic HAP. The rationale for the establishment of these subparts and requirements contained within each subpart is presented in the proposal preamble for the Generic MACT standards in 40 CFR part 63, subpart YY (63 FR 55186–55191).

We believe that the compliance, monitoring, recordkeeping, and reporting requirements of 40 CFR part 63, subparts WW and SS, are appropriate for demonstrating and documenting compliance with the requirements proposed for the Spandex Production source category. This is because these requirements were established for standards with similar formats and similar emission points with pollutant streams of gaseous organic HAP for which we are requiring MACT compliance demonstration and documentation under this proposal.

*D. Summary of Environmental, Energy, Cost, and Economic Impacts*

1. What Are the Air Quality Impacts?

There are no additional emissions reductions achieved by the proposed NESHAP. The level of control required by the proposed NESHAP is already in place at the two affected reaction spinning facilities.

2. What Are the Cost Impacts?

The total estimated annual compliance cost of the proposed NESHAP for the Spandex Production source category is $78,040. This estimate includes annualized capital costs for monitoring equipment purchased. Annual costs also include monitoring, recordkeeping, and reporting costs. Costs were not included for control equipment since this is already in place at the two reaction spinning process facilities.

The capital costs are estimated to be $32,820 (in 1998 dollars). The capital costs are for purchase of thermocouples and liquid flow transducers for CPMS equipment, and closed vent systems leak detection monitors. These costs are more than likely an overestimate since the two affected facilities already have monitors on their carbon adsorbers.

3. What Are the Economic Impacts?

The goal of the economic impact analysis is to estimate the market response of the spandex production facilities to the proposed NESHAP and to determine the economic effects that may result from the proposed NESHAP. The Spandex Production source category contains five facilities, but only the two facilities that use the reaction spinning process are affected by the proposed NESHAP. These potentially affected facilities are owned by one company.

Spandex fiber production leads to potential HAP emissions from fiber spinning lines, storage tanks, and process vents; however, the emission sources are well controlled by the affected spandex manufacturing facilities. The mandated levels of control are met at these sources; therefore, no costs are expected to be incurred by the spandex facilities in order to comply with the proposed NESHAP. Instead, the compliance costs for the proposed NESHAP relate primarily to monitoring, reporting, and recordkeeping activities. The estimated total annualized costs for the proposed NESHAP are $78,040, which represents less than 0.01 percent of the revenues of the companies that own the spandex manufacturing facilities. The proposed NESHAP are, therefore, expected to have a negligible impact on the Spandex Production source category.

The economic impacts at the facility and company levels are measured by comparing the annualized compliance costs for each entity to its revenues. A cost-to-sales ratio is first calculated and then is multiplied by 100 to convert the ratio into percentages. For the proposed NESHAP, a cost-to-sales ratio exceeding 1 percent is determined to be an initial indicator of the potential for a significant facility impact. Revenues at the facility level are not available, therefore estimated facility revenues received from the sale of spandex fiber are used. Both affected facilities are expected to incur positive compliance costs. The ratio of costs to estimated revenues range from a low of 0.22 percent to a high of 0.35 percent. Thus, on average, the economic impact of the proposed NESHAP is minimal for the facilities producing spandex fibers.

The share of compliance costs to company sales are calculated to determine company level impacts. One company owns the two affected facilities, so only one firm faces positive compliance costs from the proposed NESHAP. The ratio of costs to company revenues is 0.10 percent. At the company level, the proposed NESHAP are not anticipated to have a significant economic impact on companies that own and operate the spandex fiber facilities. For more information, consult the economic impact analysis report entitled Economic Impact Analysis: Spandex Production, which is in the docket for the spandex source category.

4. What Are the Nonair Health, Environmental and Energy Impacts?

We believe that there would not be significant adverse environmental or energy impacts associated with the proposed NESHAP for the Spandex Production source category. The industry's baseline level of control is high, and the proposed NESHAP are currently being achieved for the emission point types. Environmental

impacts from the application of the control or recovery devices proposed for the Spandex Production source category are also expected to be minimal for secondary air pollutants. In general, we determine impacts relative to the baseline that is set at the level of control in absence of the proposed NESHAP.

There is no incremental increase in emissions related to water pollution or solid waste as a result of today's proposed NESHAP.

## VI. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is ''significant'' and therefore subject to 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, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

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

It has been determined that the proposed NESHAP are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

### *B. Paperwork Reduction Act*

The information collection requirements in the proposed NESHAP have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1983.01) and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at ''farmer.sandy@epa.gov,'' or by calling (202) 260–2740. A copy may also be downloaded from the internet at ''http://www.epa.gov/icr.''

Information is required to ensure compliance with the proposed NESHAP. If the relevant information were collected less frequently, EPA would not be reasonably assured that a source is in compliance with the proposed NESHAP. In addition, EPA's authority to take administrative action would be reduced significantly.

The proposed NESHAP would require owners or operators of affected sources to retain records for a period of 5 years. The 5 year retention period is consistent with the provisions of the General Provisions of 40 CFR part 63 and with the 5 year record retention requirement in the operating permit program under title V of the CAA.

The recordkeeping and reporting requirements of the proposed NESHAP are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, ''Confidentiality of Business Information.''

The EPA expects the proposed NESHAP to affect a total of 75 facilities over the first 3 years. The EPA assumes that no new facilities will become subject to the proposed NESHAP during each of the first 3 years. The EPA expects 75 existing facilities to be affected by the proposed NESHAP, and these existing facilities will begin complying in the third year.

The estimated average annual burden for the first 3 years after promulgation of the NESHAP for the industries and the implementing agency is outlined below. You can find the details of this information collection in the ''Standard Form 83 Supporting Statement for ICR No. 1983.01,'' in Docket No. A–97–17.

| Affected entity | Total hours | Labor costs ($10^3$ $) | Capital costs ($10^3$ $) | Operating and maintenance costs ($10^3$ $) | Total costs ($10^3$ $) |
|---|---|---|---|---|---|
| Industry | 33,926 | 1,510 | 4,901 | 16 | 6,427 |
| Implementing agency | 3,465 | 117 | 0 | 0 | 117 |

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 6, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by January 5, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### *C. Executive Order 13132, Federalism*

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 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 rule. 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 proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed NESHAP 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. No facilities subject to the proposed NESHAP are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the proposed NESHAP. Furthermore, EPA is directed to develop the proposed NESHAP by section 112 of the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed NESHAP.

*D. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, we 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 we consult with those governments. If we comply by consulting, we are required by Executive Order 13084 to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed NESHAP do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments are believed to be affected by the proposed NESHAP. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the proposed NESHAP.

*E. Unfunded Mandates Reform Act of 1995*

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, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 we establish 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed NESHAP do not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22.2 million per year. The proposed NESHAP contain no mandates affecting State, local, or tribal governments. Thus, today's proposed NESHAP are not subject to the requirements of sections 202 and 205 of the UMRA.

We have determined that the proposed NESHAP 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 upon them.

*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 any 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 today's proposed rule on small entities, small entity is defined as: (1) A

small business whose parent company has fewer than 1000 employees (500 for the Carbon Black source category); (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 today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. There are no small entities affected by this proposed rule.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed NESHAP involve technical standards. The EPA proposes to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 18, 25, 25a, 26, 26a, 316, and 320. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. One voluntary consensus standard was identified as applicable and EPA proposes to use it in the proposed NESHAP.

The American Society for Testing and Materials (ASTM) consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in the proposed NESHAP in addition to EPA Methods. Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 where: (1) The target compounds are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 parts per billion by volume and 100 ppmv.

For target compounds not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compounds not listed in Table 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

The EPA proposes to incorporate by reference ASTM 6420–99 into 40 CFR 63.14 for application to subpart SS of part 63. The EPA will also cite Method 18 as a GC option in addition to ASTM D6420–99. This will allow the continued use of other GC configurations.

For EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 25, 25a, 26, 26a, 316, and 320, no applicable voluntary consensus standards were found at this time. The search and review results have been documented and are placed in the Generic MACT docket (Docket No. A–97–17).

The EPA requests comment on compliance demonstration requirements proposed today and specifically invites the public to identify potentially applicable voluntary consensus standards. Comments should explain why the proposed NESHAP should adopt these voluntary consensus standards in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301 of 40 CFR part 63, appendix A, is used).

*H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

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 we have 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 Executive Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, the proposed NESHAP are not economically significant as defined by Executive Order 12866.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 3, 2000.

**Carol M. Browner,**

*Administrator.*

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

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

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

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

2. Part 63 is proposed to be amended by adding a new subpart XX to read as follows:

### Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste

Sec.

**Introduction**

63.1080 What does this subpart do?
63.1081 When must I comply with the requirements of this subpart?

**Applicability for Heat Exchange Systems**

63.1082 Does this subpart apply to my heat exchange system?

63.1083 What heat exchange systems are exempt from the requirements of this subpart?

**Heat Exchange System Requirements**

63.1084 What are the general requirements for heat exchange systems?

**Monitoring Requirements for Heat Exchange Systems**

63.1085 How must I monitor for leaks to cooling water?
63.1086 Where must I monitor for leaks to cooling water?

**Repair Requirements for Heat Exchange Systems**

63.1087 What actions must I take if a leak is detected?
63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

**Recordkeeping and Reporting Requirements for Heat Exchange Systems**

63.1089 What records must I keep?
63.1090 What reports must I submit?

**Background for Waste Requirements**

63.1091 What do the waste requirements do?
63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

**Applicability for Waste Requirements**

63.1093 Does this subpart apply to my waste streams?
63.1094 What waste streams are exempt from the requirements of this subpart?

**Waste Requirements**

63.1095 What specific requirements must I comply with?
63.1096 What requirements must I comply with if I transfer waste offsite?

**Definitions for Waste Requirements**

63.1097 What definitions do I need to know?

**Implementation and Enforcement**

63.1098 Who implements and enforces this subpart?

**Tables to Subpart XX**

Table 1 to Subpart XX—Hazardous Air Pollutants
Table 2 to Subpart XX—Specific Differences in Requirements of this subpart and 40 CFR Part 61, Subpart FF
Table 3 to Subpart XX—Sections of 40 CFR Part 61, Subpart FF, that are not Included in the Requirements of this Subpart

## Introduction

### § 63.1080 What does this subpart do?

This subpart establishes requirements for controlling emissions of hazardous air pollutants (HAP) from heat exchange systems and waste streams at new and existing ethylene manufacturing process units.

### § 63.1081 When must I comply with the requirements of this subpart?

You must comply with the requirements of this subpart according to the schedule specified in § 63.1102(a).

## Applicability for Heat Exchange Systems

### § 63.1082 Does this subpart apply to my heat exchange system?

The provisions of this subpart apply to your heat exchange system if you own or operate an ethylene manufacturing process unit expressly referenced to this subpart XX from subpart YY of this part.

### § 63.1083 What heat exchange systems are exempt from the requirements of this subpart?

Your heat exchange system is exempt from the requirements in §§ 63.1084 and 63.1085 if it meets at least one of the criteria in paragraphs (a) through (f) of this section.

(a) Your heat exchange system operates with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(b) Your heat exchange system contains an intervening cooling fluid, containing less than 5 percent by weight of HAP, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(c) The once-through heat exchange system is subject to a National Pollution Discharge Elimination System (NPDES) permit with an allowable discharge limit of 1 part per million by weight (ppmw) or less above influent concentration or 10 percent or less above influent concentration, whichever is greater.

(d) Your once-through heat exchange system is subject to a NPDES permit that meets the conditions in paragraphs (d)(1) through (4) of this section.

(1) The permit requires monitoring of a parameter or condition to detect a leak of process fluids to cooling water.

(2) The permit specifies or includes the normal range of the parameter or condition.

(3) The permit requires monthly or more frequent monitoring for the parameters selected as leak indicators.

(4) The permit requires you to report and correct leaks to the cooling water when the parameter or condition exceeds the normal range.

(e) Your recirculating heat exchange system cools process fluids that contain less than 5 percent by weight of HAP.

(f) The once-through heat exchange system cools process fluids that contain less than 5 percent by weight of HAP.

## Heat Exchange System Requirements

### § 63.1084 What are the general requirements for heat exchange systems?

Unless you meet one of the requirements for exemptions in § 63.1083, you must meet the requirements in paragraphs (a) through (d) of this section.

(a) Monitor the cooling water for the presence of substances that indicate a leak according to §§ 63.1085 and 63.1086.

(b) If you detect a leak, repair it according to § 63.1087 unless repair is delayed according to § 63.1088.

(c) Keep the records specified in § 63.1089.

(d) Submit the reports specified in § 63.1090.

## Monitoring Requirements for Heat Exchange Systems

### § 63.1085 How must I monitor for leaks to cooling water?

You must monitor for leaks to cooling water according to the requirements in paragraphs (a) through (e) of this section.

(a) Monitor the cooling water for HAP (either in total or speciated) or other representative substances (*e.g.,* total organic carbon or volatile organic compounds (VOC)) that indicate the presence of a leak in the heat exchange system.

(b) Monitor the cooling water monthly for heat exchange systems at existing sources; weekly for heat exchange systems at new sources.

(c) Determine the concentration of the monitored substance in the cooling water using any method listed in 40 CFR part 136, as long as the method is sensitive to concentrations as low as 10 ppmw. Use the same method for both entrance and exit samples. Alternative methods may be used upon approval by the U.S. Environmental Protection Agency (EPA) Administrator.

(d) Take a minimum of three sets of samples at each entrance and exit as defined in § 63.1086(a).

(e) Calculate the average entrance and exit concentrations, correcting for the addition of make-up water and evaporative losses, if applicable. Using a one-sided statistical procedure at the 0.05 level of significance, if the exit mean concentration is at least 1 ppmw or 10 percent of the entrance mean, whichever is greater, you have detected a leak.

### § 63.1086 Where must I monitor for leaks to cooling water?

You must collect samples at the entrance and exit of each nondirect-contact heat exchanger in the ethylene manufacturing process unit used to cool fluids containing 5 percent by weight organic HAP (or other mentioned substances) or greater.

## Repair Requirements for Heat Exchange Systems

### § 63.1087 What actions must I take if a leak is detected?

If a leak is detected, you must comply with the requirements in paragraphs (a) and (b) of this section unless repair is delayed according to § 63.1088.

(a) Repair the leak as soon as practical but not later than 15 calender days after you received the results of monitoring tests that indicated a leak. You must repair the leak unless you demonstrate that the results are due to a condition other than a leak.

(b) Once the leak has been repaired, confirm that the heat exchange system has been repaired according to the monitoring requirements in §§ 63.1085 and 63.1086 within 7 calender days of the repair or startup, whichever is later.

### § 63.1088 In what situations may I delay leak repair, and what actions must I take for delay of repair?

You may delay repair of heat exchange systems for which leaks have been detected if the leaking equipment is isolated from the process. You may also delay repair if repair is technically infeasible without a shutdown, and you meet one of the conditions in paragraphs (a) through (c) of this section.

(a) If a shutdown is expected within 15 calendar days of determining delay of repair is necessary, you are not required to have a special shutdown before that planned shutdown.

(b) If a shutdown is not expected within 15 calendar days of determining delay of repair is necessary, you may delay repair if a shutdown for repair would cause greater emissions than the potential emissions from delaying repair until the next shutdown of the process equipment associated with the leaking heat exchanger. You must document the basis for the determination that a shutdown for repair would cause greater emissions than the emissions likely to result from delay of repair. The documentation process must include the activities in paragraphs (b)(1) through (3) of this section.

(1) Specify a schedule for completing the repair as soon as practical.

(2) Calculate the potential emissions from the leaking heat exchanger by multiplying the concentration of HAP (or other monitored substances) in the cooling water from the leaking heat exchanger by the flowrate of the cooling water from the leaking heat exchanger and by the expected duration of the delay.

(3) Determine emissions from purging and depressurizing the equipment that will result from the unscheduled shutdown for the repair.

(c) If repair is delayed for reasons other than those specified in paragraph (a) or (b) of this section, you may delay repair a maximum of 30 calendar days. You must demonstrate that the necessary parts or personnel were not available.

## Recordkeeping and Reporting Requirements for Heat Exchange Systems

### § 63.1089 What records must I keep?

You must keep the records in paragraphs (a) through (c) of this section, according to the requirements of § 63.1109(c).

(a) Monitoring data required by § 63.1085 that indicates a leak, the date the leak was detected, or, if applicable, the basis for determining there is no leak.

(b) The dates of efforts to repair leaks.

(c) The method or procedures used to confirm repair of a leak, and the date the repair was confirmed.

(d) Documentation of delay of repair as specified in § 63.1088.

### § 63.1090 What reports must I submit?

If you delay repair for your heat exchange system, you must report the delay of repair in the semiannual report required by § 63.1110(e). If the leak remains unrepaired, you must continue to report the delay of repair in semiannual reports until you repair the leak. You must include the information in paragraphs (a) through (e) of this section in the semiannual report.

(a) The fact that a leak was detected, and the date that the leak was detected.

(b) Whether or not the leak has been repaired.

(c) The reasons for delay of repair. If you delayed the repair as provided in § 63.1088(b), documentation of emissions estimates.

(d) If a leak remains unrepaired, the expected date of repair.

(e) If a leak is repaired, the date the leak was successfully repaired.

## Background for Waste Requirements

### § 63.1091 What do the waste requirements do?

The waste requirements in this subpart require you to comply with requirements of 40 CFR part 61, subpart FF, National Emission Standards for Benzene Waste Operations. Because the requirements of subpart FF of 40 CFR part 61 regulate benzene emissions and this subpart regulates HAP, there are some differences between the ethylene production waste requirements and those of subpart FF of 40 CFR part 61. Additionally, some compliance options available in subpart FF of 40 CFR part 61 do not apply to ethylene production sources.

### § 63.1092 What are the major differences between the requirements of 40 CFR part 61, subpart FF, and the waste requirements for ethylene production sources?

The major differences between the requirements of 40 CFR part 61, subpart FF and the requirements for ethylene production sources are listed in paragraphs (a) through (c) of this section.

(a) The requirements for ethylene production sources apply to all ethylene production sources that are part of a major source. The requirements do not include a provision to exempt sources with a total annual benzene quantity less than 10 megagrams per year, or any similar cutoff, from control requirements.

(b) The requirements for ethylene production sources apply to waste streams containing any of the HAP listed in Table 1 to this subpart, not only waste streams containing benzene.

(c) The requirements for ethylene production sources do not include the compliance options at 40 CFR 61.342(c)(3)(ii), (d) and (e).

## Applicability for Waste Requirements

### § 63.1093 Does this subpart apply to my waste streams?

The waste stream provisions of this subpart apply to your waste streams if you own or operate an ethylene production facility expressly referenced to this subpart XX from 40 CFR part 63, subpart YY.

### § 63.1094 What waste streams are exempt from the requirements of this subpart?

The types of waste described in paragraphs (a) and (b) of this section are exempt from this subpart.

(a) Waste in the form of gases or vapors that is emitted from process fluids.

(b) Waste that is contained in a segregated storm water sewer system.

## Waste Requirements

### § 63.1095 What specific requirements must I comply with?

For waste containing the HAP listed in Table 1 to this subpart, you must

comply with all of the requirements of 40 CFR part 61, subpart FF, as modified by paragraphs (a) through (c) of this section.

(a) Use the term ''HAP'' instead of ''benzene'' everywhere ''benzene'' appears in 40 CFR part 61, subpart FF, unless Table 2 to this subpart instructs an alternate substitution for a phrase containing ''benzene,'' as discussed in paragraph (b) of this section. For the purposes of the waste requirements of this subpart, *HAP* means any of the compounds listed in Table 1 to this subpart.

(b) *Apply the wording differences listed in Table 2 to this subpart as specified in paragraphs* (b)(1) and (2) of this section.

(1) Table 2 to this subpart gives a referenced section of 40 CFR part 61, subpart FF, and a phrase that appears in that section. Instead of the phrase in 40 CFR part 61, subpart FF, use the phrase in the last column of Table 2 to this subpart to produce the requirements for ethylene production sources.

(2) If a section of 40 CFR part 61, subpart FF, references another section of subpart FF, you must comply with the referenced section, except use the wording differences specified in Table 2 to this subpart to produce the requirements for ethylene production sources.

(c) Table 3 to this subpart shows the sections of 40 CFR part 61, subpart FF, that are not included in the waste requirements of this subpart.

### § 63.1096 What requirements must I comply with if I transfer waste offsite?

If you elect to transfer waste offsite, you must comply with the requirements in paragraphs (a) through (d) of this section.

(a) Include a notice with the shipment or transport of each waste stream. The notice shall state that the waste stream contains organic HAP that are to be treated in accordance with the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly-owned treatment works), the notice shall be submitted to the treatment operator initially and whenever there is a change in the required treatment.

(b) You may not transfer the waste stream unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat any waste stream received from a source subject to the requirements of this subpart in accordance with the requirements of this subpart. The certifying entity may revoke the written certification by sending a written statement to the EPA and you giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (b). Upon expiration of the notice period, you may not transfer the waste stream to the treatment operation.

(c) By providing this written certification to the EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions in paragraph (b) of this section with respect to any shipment of waste covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of those provisions by owners or operators of sources.

(d) Written certifications and revocation statements to the EPA from the transferees of waste shall be signed by the responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable by the treater.

## Definitions for Waste Requirements

### § 63.1097 What definitions do I need to know?

(a) Unless defined in paragraph (b) of this section, definitions for terms used in this subpart are provided in the Clean Air Act, § 63.1103(e), or § 61.341, except use the wording differences specified in Table 2 to this subpart to produce the definitions for ethylene production sources.

(b) The following definitions apply to terms used in this subpart:

*Process wastewater* means water which comes in contact with any of the HAP listed in Table 1 to this subpart during manufacturing or processing operations conducted within an ethylene manufacturing process unit. Process wastewater is not organic wastes, process fluids, product tank drawdown, cooling water blowdown, steam trap condensate, or landfill leachate. Process wastewater includes direct-contact cooling water.

## Implementation and Enforcement

### § 63.1098 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1084, 63.1085 and 63.1095, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

## TABLES TO SUBPART XX

TABLE 1 TO SUBPART XX.—HAZARDOUS AIR POLLUTANTS

| Hazardous air pollutant [a] | CAS number [a] |
|---|---|
| Benzene | 71432 |
| 1,3-Butadiene | 106990 |
| Cumene | 98828 |
| Ethyl benzene | 100414 |
| Hexane | 110543 |
| Naphthalene | 91203 |
| Styrene | 100425 |
| Toluene | 108883 |
| o-Xylene | 95476 |
| m-Xylene | 108383 |
| p-Xylene | 106423 |

[a] Includes all isomers of listed pollutant although isomers may have a different CAS number.

TABLE 2 TO SUBPART XX.—SPECIFIC DIFFERENCES IN REQUIREMENTS OF THIS SUBPART AND 40 CFR PART 61, SUBPART FF

| To comply with 40 CFR part 63, subpart XX, in * * * | Instead of the phrase: | Use the phrase [a]: |
|---|---|---|
| § 61.341 | benzene | any HAP. |
| § 61.342(c) | at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr as determined in paragraph (a) of this section. | to which the wastewater requirements of this subpart XX apply. |
| § 61.342(c)(1) | benzene | any HAP. |
| § 61.342(c)(2) | benzene concentration | total HAP concentration. |
| § 61.342(c)(3) | either paragraph (c)(3)(i) or (ii) of this section | paragraph (c)(3)(i) of this section. |
| § 61.348(a)(1)(i) | level | total level. |
| § 61.348(b)(2)(i) | benzene | total HAP. |
| § 61.349(a)(2)(i)(A) | reduce the organic emissions vented to it by 95 weight percent or greater. | reduce the HAP or total organic compound emissions vented to it by 98 weight percent or greater. |
| § 61.349(a)(2)(ii) | recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater. | recover or control the HAP or total organic compound emissions vented to it with an efficiency of 98 weight percent or greater. |
| § 61.349(a)(2)(iv)(A) | the device shall recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater. | the device shall recover or control the HAP or total organic compound emissions vented to it with an efficiency of 98 weight percent or greater. |
| § 61.349(a)(2)(iv)(B) | the control device will achieve an emission control efficiency of either 95 percent or greater for organic compounds or 98 percent or greater for benzene. | the control device will achieve an emission control efficiency of 98 percent or greater for HAP or total organic compounds. |
| § 61.354(a)(1) | at least once per month by collecting and analyzing one or more samples using the procedures specified in § 61.355(c)(3). | continuously. |
| § 61.354(c)(6)(i) | either the concentration level of the organic compounds or the concentration level of benzene. | the concentration level of the organic compounds. |
| § 61.354(c)(7)(i) | either the concentration level of the organic compounds or the benzene concentration level. | the concentration level of the organic compounds. |
| § 61.354(c)(8) | either the concentration level of the organic compounds or the benzene concentration level. | the concentration level of the organic compounds. |
| § 61.354(d) | either the concentration level of the organic compounds or the concentration level of benzene. | the concentration level of the organic compounds. |
| § 61.354(d) | either the organic concentration or the benzene concentration. | the organic concentration. |
| § 61.355(c)(3)(v) | benzene | total HAP. |
| § 61.355(e)(3) | benzene | total HAP. |
| § 61.355(e)(4) | benzene | total HAP. |
| § 61.355(f)(3) | benzene | total HAP. |
| § 61.355(f)(4)(iii) | C=Concentration of benzene | C=Sum of concentrations of HAP measured in the exhaust, ppmv. |
| § 61.355(f)(4)(iii) | K=Conversion factor=3.24 kg/m$^{31}$ for benzene | K=Weighted average density of HAP at standard conditions, kg/m$^3$. |
| § 61.355(g) | benzene concentration | total HAP concentration. |
| § 61.355(i) | either the organic reduction efficiency requirement or the benzene reduction efficiency requirement specified under § 61.349(a)(2). | the HAP or total organic compound reduction efficiency specified under § 61.349(a)(2). |
| § 61.355(i)(3)(iii) | benzene concentration | concentration of HAP i. |
| § 61.355(i)(3)(iii) | molecular weight of benzene | molecular weight of HAP i. |
| § 61.355(i)(3)(iii) | number of organic compounds in the vent stream | number of organic compounds or HAP in the vent stream. |
| § 61.355(i)(4) | benzene | total HAP. |
| § 61.356(b)(1) | waste stream identification, water content, whether or not the waste stream is a process wastewater stream, annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity. | waste stream identification, whether or not the waste stream is a process wastewater stream, range of HAP concentrations, and annual average flow-weighted HAP concentrations. |
| § 61.356(j)(8) | organics or concentration of benzene | organics. |
| § 61.356(j)(8) | organics or the concentration of benzene | organics. |
| § 61.356(j)(9) | organics or the concentration of benzene | organics. |
| § 61.357(a) | within 90 days after January 7, 1993 | as part of the initial notification report required in paragraph (c) of § 63.1110. |
| § 61.357(a) | § 61.342 | 40 CFR part 63, subpart XX. |
| § 61.357(a) | the report shall include the following information: | the report shall include the information in paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section. |

TABLE 2 TO SUBPART XX.—SPECIFIC DIFFERENCES IN REQUIREMENTS OF THIS SUBPART AND 40 CFR PART 61, SUBPART FF—Continued

| To comply with 40 CFR part 63, subpart XX, in * * * | Instead of the phrase: | Use the phrase [a]: |
|---|---|---|
| § 61.357(a)(3)(iii) | Annual waste quantity for the waste stream | If the stream is managed or treated in an exempt unit according to § 61.348(b), annual waste quantity for the waste stream. |
| § 61.357(a)(4) | paragraphs (a)(1), (2), and (3) | paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section. |
| § 61.357(d) | if the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator. | the owner or operator to which the waste-water requirements of 40 CFR part 63, subpart XX apply. |
| § 61.357(d)(1) | within 90 days after January 7, 1993 | with the Notification of Compliance Status report required by paragraph (d) of § 63.1110. |
| § 61.357(d)(2) | paragraphs (a)(1) through (3) of this section | paragraphs (a)(2) and (a)(3) except (a)(3)(i) of this section. |
| § 61.357(d)(7)(iii) | concentration of benzene | total concentration of HAP. |

[a] For the purpose of this table and the waste requirements of this subpart, HAP means any of the compounds listed in Table 1 to this subpart.

TABLE 3 TO SUBPART XX.—SECTIONS OF 40 CFR PART 61, SUBPART FF, THAT ARE NOT INCLUDED IN THE REQUIREMENTS FOR THIS SUBPART

| Section | Paragraphs |
|---|---|
| 61.340 | all. |
| 61.342 | (a), (b), (c)(3)(ii), (d), (e), (f). |
| 61.348 | (d)(3), (d)(4). |
| 61.355 | (a), (j), (k). |
| 61.356 | (b)(2)(ii),(b)(3) through (5). |
| 61.357 | (a)(1), (a)(3)(i), (b), (c), (d)(3) through (5). |

## Subpart SS—[Amended]

3. Section 63.983 is amended by:

a. Revising paragraphs (a)(3)(i) and (ii);

b. Revising the heading for paragraph (b); and

c. Adding paragraph (b)(4).

The revisions and addition read as follows:

### § 63.983 Closed vent systems.

* * * * *

(a) * * *

(3) * * *

(i) Properly install, maintain, and operate a flow indicator that is capable of taking periodic readings. Records shall be generated as specified in § 63.998(d)(1)(ii)(A). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. Records shall be generated as specified in § 63.998(d)(1)(ii)(B).

* * * * *

(b) *Closed vent system inspection and monitoring requirements.* * * *

(4) For each bypass line, the owner or operator shall comply with paragraph (b)(4)(i) or (ii) of this section.

(i) If a flow indicator is used, take a reading at least once every 15 minutes.

(ii) If the bypass line valve is secured in the non-diverting position, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position, and the vent stream is not diverted through the bypass line.

* * * * *

4. Section 63.992 is added to read as follows:

### § 63.992 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.983(a) and (d), 63.984, 63.685(a), 63.986(a), 63.987(a), 63.988(a), 63.990(a), 63.993(a), 63.994(a), and 63.995(a) under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

5. Section 63.996 is amended by adding paragraphs (c)(7) through (10) as follows:

### § 63.996 General monitoring requirements for control and recovery devices.

* * * * *

(c) * * *

(7) For each CPMS, the owner or operator must meet the requirements in paragraphs (c)(7)(i) through (iii) of this section.

(i) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(ii) To calculate a valid hourly average, there must be at least four equally spaced values for that hour, excluding data collected during the periods described in paragraph (c)(5) of this section.

(iii) Calculate a daily average using all of the valid hourly averages for each day.

(8) For each temperature monitoring device, meet the requirements in paragraphs (c)(8)(i) through (viii) of this section.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) For a noncryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 0.75 percent of the temperature value, whichever is larger.

(iii) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 °C or 2

percent of the temperature value, whichever is larger.

(iv) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(v) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11 °C.

(vi) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7 °C of the process temperature sensor's reading.

(vii) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(viii) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(9) For each pressure measurement device, the owner or operator must meet the requirements in paragraphs (c)(9)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check pressure tap pluggage daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(10) For each pH measurement device, the owner or operator must meet the requirements in paragraphs (c)(10)(i) through (iv) of this section.

(i) Locate the pH sensor in a position that provides a representative measurement of pH.

(ii) Ensure the sample is properly mixed and representative of the fluid to be measured.

(iii) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(iv) At least monthly, inspect all components for integrity and all electrical connections for continuity.

* * * * *

6. Section 63.997 is amended by:

a. Revising paragraph (e)(2)(ii);

b. Revising paragraph (e)(2)(iii) introductory text;

c. Revising paragraph (e)(2)(iii)(D);

d. Adding paragraph (e)(2)(iii)(E);

e. Revising paragraph (e)(2)(iv) introductory text;

f. Removing paragraphs (e)(2)(iv)(B)(*2*) and (*3*); and

g. Adding paragraphs (e)(2)(iv)(F) through (K).

The revisions and additions read as follows:

**§ 63.997 Performance test and compliance assessment requirements for control devices.**

* * * * *

(e) * * *

(2) * * *

(ii) *Gas volumetric flow rate.* The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate.

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC limit, the owner or operator shall use Method 18 or 25A of 40 CFR part 60, appendix A, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iii)(A) through (E) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen if a combustion device is the control device and supplemental combustion air is used to combust the emissions.

* * * * *

(D) To measure the total organic regulated material concentration at the outlet of a combustion control device, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference). For a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream using process knowledge or the screening procedure described in Method 18. In conducting the performance test, analyze samples collected at the outlet of the combustion control device as specified in Method 18 or ASTM D6420–99 for the regulated material compounds present at the inlet of the control device.

(E) To measure the TOC concentration of the outlet vent stream, use Method 25A of 40 CFR part 60, appendix A, according to the procedures in paragraphs (e)(2)(iii)(E)(*1*) through (*4*) of this section.

(*1*) Calibrate the instrument on the predominant regulated material compound.

(*2*) The test results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation for the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale.

(*3*) The span value of the analyzer must be less than 100 parts per million by volume.

(*4*) Report the results as carbon, calculated according to Equation 25A–1 of Method 25A.

(iv) *Percent reduction calculation.* To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18, 25, or 25A of 40 CFR part 60, appendix A, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A to this part may be used. The procedures specified in paragraphs (e)(2)(iv)(A) through (K) of this section shall be used to calculate percent reduction efficiency.

* * * * *

(F) To measure inlet and outlet concentrations of total organic regulated material, use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in § 63.14). In conducting the performance test, collect and analyze samples as specified in Method 18 or ASTM D6420–99. You must collect samples simultaneously at the inlet and outlet of the control device. If the performance test is for a combustion control device, you must first determine which regulated material compounds are present in the inlet gas stream (*i.e.*, uncontrolled emissions) using process knowledge or the screening procedure described in Method 18. Quantify the emissions for the regulated material compounds present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

(G) To determine inlet and outlet concentrations of TOC, use Method 25 of 40 CFR part 60, appendix A. Measure the total gaseous non-methane organic (TGNMO) concentration of the inlet and outlet vent streams using the procedures

of Method 25. Use the TGNMO concentration in Equations 4 and 5 of paragraph (e)(2)(iv)(B) of this section.

(H) Method 25A may be used instead of Method 25 to measure inlet and outlet concentrations of TOC if the condition in either paragraph (e)(2)(iv)(H)(*1*) or (*2*) of this section is met.

(*1*) The concentration at the inlet to the control system and the required level of control would result in exhaust TGNMO concentrations of 50 parts per million by volume or less.

(*2*) Because of the high efficiency of the control device, the anticipated TGNMO concentration of the control device exhaust is 50 parts per million by volume or less, regardless of the inlet concentration.

(I) To measure hydrogen halide and halogen concentrations, use Method 26 in appendix A to 40 CFR part 60. Use a minimum sampling time of 1 hour. Use Method 26A in lieu of Method 26 when measuring emissions at the outlet of a scrubber where the potential for mist carryover exists.

(J) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to paragraph (e)(2)(iv)(J)(*1*) or (*2*) of this section.

(*1*) If you elect to comply with a percent reduction requirement and formaldehyde is the principal regulated material compound (*i.e.*, greater than 50 percent of the regulated material compounds in the stream by volume), you must use Method 316 or 320 of appendix A to this part to measure formaldehyde at the inlet and outlet of the control device. Use the percent reduction in formaldehyde as a surrogate for the percent reduction in total regulated material emissions.

(*2*) If you elect to comply with an outlet total organic regulated material concentration or TOC concentration limit, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (by volume) formaldehyde, you must use Method 316 or 320 of appendix A to this part to separately determine the formaldehyde concentration. Calculate the total organic regulated material concentration or TOC concentration by totaling the formaldehyde emissions measured using Method 316 or 320 and the other regulated material compound emissions measured using Method 18 or 25/25A.

(K) You may use ASTM D6420–99 (incorporated by reference as specified in § 63.14) in lieu of Method 18 of 40 CFR part 60, appendix A, if a minimum of one sample/analysis cycle is completed at least every 15 minutes, and the condition in paragraph (e)(2)(iv)(K)(*1*) or (*2*) of this section is met.

(*1*) The target compounds are listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

(*2*) The target compounds are not listed in Section 1.1 of ASTM D6420–99, but are potentially detected by mass spectrometry. In this case, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

* * * * *

## Subpart TT—[Amended]

7. Section 63.1000 is amended by adding paragraph (b) to read as follows:

### § 63.1000 Applicability.

* * * * *

(b) *Implementation and enforcement.* This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(1) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1)(i) through (v) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(i) Approval of alternatives to the non-opacity emissions standards in §§ 63.1003 through 63.1015, under § 63.6(g). Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(ii) [Reserved]

(iii) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(iv) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(v) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(2) [Reserved]

## Subpart UU—[Amended]

8. Section 63.1019 is amended by adding paragraphs (f) and (g) to read as follows:

### § 63.1019 Applicability.

* * * * *

(f) *Implementation and enforcement.* This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(g) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (g)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1022 through 62.1034, under § 63.6(g), and the standards for quality improvement programs in § 63.1035. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

## Subpart WW—[Amended]

9. Section 63.1067 is added to read as follows:

### § 63.1067 Implementation and enforcement.

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to

a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.1062 and 63.1063(a) and (b) for alternative means of emission limitation, under § 63.6(g).

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

## Subpart YY—[Amended]

10. Section 63.1100 is amended by:

a. Revising the first sentence of paragraph (a);

b. Adding four entries in alphabetical order and two footnotes to Table 1;

c. Revising paragraphs (g)(1)(ii), (g)(2), and (g)(5) and

d. Adding paragraph (g)(6).

The revisions and additions read as follows:

### § 63.1100 Applicability.

(a) *General.* This subpart applies to source categories and affected sources specified in § 63.1103(a) through (h).

* * *

* * * * *

TABLE 1 TO § 63.1100(A).—SOURCE CATEGORY MACT [a] APPLICABILITY

| Source category | Storage vessels | Process vents | Transfer racks | Equipment leaks | Waste-water streams | Other | Source category MACT requirements |
|---|---|---|---|---|---|---|---|
| * * | | * | * | | * | * | * |
| Carbon Black Production | No | Yes | No | No | No | No | § 63.1103(f) |
| Cyanide Chemicals Manufacturing. | Yes | Yes | Yes | Yes | Yes | No | § 63.1103(g) |
| * * | | * | * | | * | * | * |
| Ethylene Production | Yes | Yes | Yes | Yes | Yes | Yes [c] | § 63.1103(e) |
| * * | | * | * | | * | * | * |
| Spandex Production | Yes | Yes | No | No | No | Yes [d] | § 63.1103(h) |
| * * | | * | * | | * | * | * |

[c] Heat exchange systems as defined in § 63.1103(e)(2).
[d] Fiber spinning lines.

* * * * *

(g) * * *

(1) * * *

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that must be controlled according to the storage vessel requirements of this subpart, and that must be controlled according to the storage vessel requirements of subpart Ka or Kb of 40 CFR part 60 is required to comply only with the storage vessel requirements of this subpart.

(2) *Overlap of subpart YY with other regulations for process vents.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that must be controlled according to the process vent requirements of this subpart, and that must be controlled according to the process vent requirements of subpart G (the HON) of this part is in compliance with this subpart if it complies with either the process vent requirements of this subpart or subpart G of this part, and the owner or operator has notified the Administrator in the Notification of Compliance Status report required by § 63.1110(a)(4).

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that must be controlled according to the process vent requirements of this subpart, and that must be controlled according to the process vent requirements of subpart RRR or NNN of 40 CFR part 60 is required to comply only with the process vent requirements of this subpart.

* * * * *

(5) *Overlap of subpart YY with other regulations for wastewater for source categories other than ethylene production.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to the wastewater requirements of this subpart and the wastewater requirements of subparts F and G of this part (the HON) shall be deemed to be in compliance with the requirements of this subpart if it complies with either set of requirements. In any instance where a source subject to this subpart is collocated with a Synthetic Organic Chemical Manufacturing Industry (SOCMI) source, and a single wastewater treatment facility treats both Group 1 wastewaters and wastewater residuals from the source subject to this subpart and wastewaters from the SOCMI source, a certification by the treatment facility that they will manage and treat the waste in conformity with the specific control requirements set forth in §§ 63.133 through 63.147 will also be deemed sufficient to satisfy the certification requirements for wastewater treatment under this subpart. This paragraph does not apply to the ethylene production source category.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a wastewater stream that is subject to control requirements in the Benzene Waste Operations NESHAP (subpart FF of 40 CFR part 61) and this subpart is required to comply with both rules. This paragraph (g)(5)(ii) does not apply to the ethylene production source category.

(6) *Overlap of subpart YY with other regulations for waste for the ethylene production source category.*

(i) After the compliance date specified in § 63.1102, a waste stream that is conveyed, stored, or treated in a

wastewater stream management unit, waste management unit, or wastewater treatment system that receives streams subject to both the control requirements of § 63.1103(e)(2) for ethylene production sources and the provisions of §§ 63.133 through 63.147 shall comply as specified in paragraphs (g)(6)(i)(A) through (C) of this section. Compliance with the provisions of this paragraph (g)(6)(i) shall constitute compliance with the requirements of this subpart for that waste stream.

(A) Comply with the provisions in §§ 63.133 through 63.137 and 63.140 for all equipment used in the storage and conveyance of the waste stream.

(B) Comply with the provisions in §§ 63.1103(e), 63.138, and 63.139 for the treatment and control of the waste stream.

(C) Comply with the provisions in §§ 63.143 through 63.148 for monitoring and inspections of equipment and for recordkeeping and reporting requirements. The owner or operator is not required to comply with the monitoring, recordkeeping, and reporting requirements associated with the treatment and control requirements in §§ 61.355 through 61.357.

(ii) After the compliance date specified in § 63.1102, compliance with § 63.1103(e) shall constitute compliance with the Benzene Waste Operations NESHAP (subpart FF of 40 CFR part 61) for waste streams that are subject to both the control requirements of § 63.1103(e)(2) for ethylene production sources and the control requirements of 40 CFR part 61, subpart FF.

11. Section 63.1101 is amended by:

a. Adding a sentence at the end of the introductory text;

b. Adding a sentence to the end of the definition of ''process vent;''

c. Revising the definitions of ''shutdown'' and ''total organic compounds.''

The revisions read as follows:

**§ 63.1101 Definitions.**

* * * The definitions in this section do not apply to waste requirements for ethylene production sources.

* * * * *

*Process vent* * * * This definition does not apply to ethylene production sources. Ethylene manufacturing process vents are defined in § 63.1103(e)(2).

* * * * *

*Shutdown* means the cessation of operation of a regulated source and equipment required or used to comply with this subpart, or the emptying and degassing of a storage vessel. For the purposes of this subpart, shutdown includes, but is not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. Shutdown includes the decoking of ethylene manufacturing process unit furnaces.

* * * * *

*Total organic compounds or (TOC)* means the total gaseous organic compounds (minus methane and ethane) in a vent stream, with the concentrations expressed on a carbon basis.

* * * * *

12. Section 63.1102 is revised to read as follows:

**§ 63.1102 Compliance Schedule.**

(a) *General requirements.* Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production; § 63.1103(b)(1)(i) for acrylic and monacrylic fiber production; § 63.1103(c)(1)(i) for hydrogen fluoride production; § 63.1103(d)(1)(i) for polycarbonate production; § 63.1103(e)(1)(i) for ethylene production; § 63.1103(f)(1)(i) for carbon black production; § 63.1103(g)(1)(i) for cyanide chemicals manufacturing; or § 63.1103(h)(1)(i) for spandex production shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule in paragraph (a)(1) or (2) of this section, as appropriate. Proposal and effective dates are specified in Table 1 to this section.

(1) *Compliance dates for new and reconstructed sources.* (i) The owner or operator of a new or reconstructed affected source that commences construction or reconstruction after the proposal date, and that has an initial startup before the effective date of standards for an affected source, shall comply with this subpart no later than the applicable effective date in Table 1 to this section.

(ii) The owner or operator of a new or reconstructed affected source that has an initial startup after the applicable effective date in Table 1 to § 63.1102 shall comply with this subpart upon startup of the source.

(iii) The owner or operator of an affected source that commences construction or reconstruction after the proposal date, but before the effective date in Table 1 to § 63.1102, shall comply with this subpart no later than the date 3 years after the effective date if the conditions in paragraphs (a)(1)(iii)(A) and (B) of this section are met.

(A) The promulgated standards are more stringent than the proposed standards.

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for the affected source.

(2) *Compliance dates for existing sources.* (i) The owner or operator of an existing affected source shall comply with the requirements of this subpart within 3 years after the effective date of standards for the affected source.

(ii) The owner or operator of an area source that increases its emissions of (or its potential to emit) HAP such that the source becomes a major source shall be subject to the relevant standards for existing sources under this subpart. Such sources shall comply with the relevant standards within 3 years of becoming a major source.

TABLE 1 TO § 63.1102.—SOURCE CATEGORY PROPOSAL AND EFFECTIVE DATES

| Source category | Proposal date | Effective date |
|---|---|---|
| 1. Acetal Resins Production | October 14, 1998 | June 29, 1999. |
| 2. Acrylic and Modacrylic Fibers Production | October 14, 1998 | June 29, 1999. |
| 3. Hydrogen Fluoride Production | October 14, 1998 | June 29, 1999. |
| 4. Polycarbonate Production | October 14, 1998 | June 29, 1999. |
| 5. Ethylene Production | December 6, 2000 | [*DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER*]. |
| 6. Carbon Black Production | December 6, 2000 | [*DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER*]. |
| 7. Cyanide Chemicals Manufacturing | December 6, 2000 | [*DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER*]. |

TABLE 1 TO § 63.1102.—SOURCE CATEGORY PROPOSAL AND EFFECTIVE DATES—Continued

| Source category | Proposal date | Effective date |
|---|---|---|
| 8. Spandex Production | December 6, 2000 | [*DATE OF PUBLICATION OF THE FINAL SUBPART IN THE FEDERAL REGISTER*]. |

* * * * *

13. Section 63.1103 is amended by adding paragraphs (e) through (h), and adding Tables 7 through 10 as follows:

**§ 63.1103 Source category-specific applicability, definitions, and requirements.**

* * * * *

(e) *Ethylene production applicability, definitions, and requirements*—(1) *Applicability.*—(i) *Affected source.* For the ethylene production (as defined in paragraph (e)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (e)(1)(i)(A) through (F) of this section that are associated with an ethylene manufacturing process unit located at a major source, as defined in section 112(a) of the Act.

(A) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(B) All process vents (as defined in paragraph (e)(2) of this section) from continuous unit operations.

(C) All transfer racks (as defined in paragraph (e)(2) of this section) that load HAP-containing material.

(D) Equipment (as defined in § 63.1101) that contains or contacts organic HAP.

(E) All waste streams (as defined in paragraph (e)(2) of this section) associated with the ethylene production process.

(F) All heat exchange systems (as defined in paragraph (e)(2) of this section) associated with the ethylene production process.

(ii) *Exceptions.* The emission points listed in paragraphs (e)(1)(ii)(A) through (I) of this section are in the ethylene production source category but are not subject to the requirements of paragraph (e)(3) of this section.

(A) Equipment that is located within an ethylene manufacturing process unit that is subject to this subpart but does not contain organic HAP.

(B) Stormwater from segregated sewers.

(C) Water from fire-fighting and deluge systems in segregated sewers.

(D) Spills.

(E) Water from safety showers.

(F) Water from testing of deluge systems.

(G) Vessels storing organic liquids that contain organic HAP as impurities.

(H) Transfer racks, loading arms, or loading hoses that only transfer liquids containing organic HAP as impurities.

(I) Transfer racks, loading arms, or loading hoses that vapor balance during all transfer operations.

(iii) *Compliance schedule.* The compliance schedule for affected sources as defined in paragraph (e)(1)(i) of this section is specified in § 63.1102.

(2) *Definitions. Ethylene manufacturing process vent* means a gas stream containing greater than 0.005 weight-percent and 20 parts per million by volume HAP that is continuously discharged during operation of an ethylene manufacturing process unit, as defined in this section. Ethylene manufacturing process vents are gas streams that are discharged to the atmosphere (or the point of entry into a control device, if any) either directly or after passing through one or more recovery devices. Ethylene manufacturing process vents do not include relief valve discharges; gaseous streams routed to a fuel gas system; leaks from equipment regulated under this subpart; episodic or nonroutine releases such as those associated with startup, shutdown, and malfunction; and in situ sampling systems (online analyzers).

*Ethylene manufacturing process unit* means a process unit that is specifically utilized for the production of ethylene/propylene, including all separation and purification processes.

*Ethylene production* means the process by which ethylene/propylene is produced as a product or an intermediate by either a pyrolysis process (hydrocarbons subjected to high temperatures in the presence of steam) or separation from a petroleum refining stream. The ethylene production process includes the separation of ethylene/propylene from associated streams such as products made from compounds composed of four carbon atoms (C4), pyrolysis gasoline, and pyrolysis fuel oil. The ethylene production process does not include the manufacture of synthetic organic chemicals such as the production of butadiene from the C4 stream and aromatics from pyrolysis gasoline.

*Heat exchange system* means any cooling tower system or once-through cooling water system (e.g., river or pond water). A heat exchange system can include an entire recirculating or once-through cooling system.

*Transfer rack* means the collection of loading arms and loading hoses, at a single loading rack, that are associated with an ethylene manufacturing process unit subject to this subpart and are used to fill tank trucks and/or railcars with organic HAP. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves. Transfer rack does not include racks, arms, or hoses that contain organic HAP only as impurities; or racks, arms, or hoses that vapor balance during all loading operations.

*Waste* means any material resulting from industrial, commercial, mining, or agricultural operations, or from community activities, that is discarded or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded, recycled, or discharged.

*Waste stream* means the waste generated by a particular process unit, product tank, or waste management unit. The characteristics of the waste stream (*e.g.*, flow rate, HAP concentration, water content) are determined at the point of waste generation. Examples of a waste stream include process wastewater, product tank drawdown, sludge and slop oil removed from waste management units, and landfill leachate.

(3) *Requirements.* Table 7 to this section specifies the ethylene production source category requirements for new and existing sources. The owner or operator must control organic HAP emissions from each affected source emission point by meeting the applicable requirements specified in Table 7 to § 63.1103. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, excluding paragraphs (d), (g), (h), (i), (j), (l)(1), and (n). An owner or operator must perform the applicability assessment procedures and methods for equipment leaks specified in § 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting

and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 7 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ETHYLENE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

| If you own or operate * * * | And if * * * | Then you must * * * |
|---|---|---|
| 1. A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP. | The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals and<br>the capacity of the vessel is ≥4 cubic meters but <95 cubic meters. | a. Fill the vessel through a submerged pipe; or<br>b. Comply with the requirements for storage vessels with capacities ≥95 cubic meters. |
| 2. A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP. | The maximum true vapor pressure of total organic HAP is ≥3.4 kilopascals but <76.6 kilopascals; and<br>the capacity of the vessel is ≥95 cubic meters | a. Comply with the requirements of subpart WW of this part; or<br>b. Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(1). |
| 3. A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP. | The maximum true vapor pressure of total organic HAP is ≥76.6 kilopascals. | Reduce emissions of total organic HAP by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(1). |
| 4. A process vent (as defined in paragraph (e)(2) of this section) from continuous unit operations. | The vent stream has an average flow rate ≥ 0.011 scmm; and<br>the vent stream has a total organic HAP concentration ≥50 parts per million by volume. | Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(2). |
| 5. A transfer rack (as defined in paragraph (e)(2) of this section). | Materials loaded have a true vapor pressure of total organic HAP ≥3.4 kilopascals; and<br>≥ 76 cubic meters per day (averaged over any consecutive 30-day period) of HAP-containing material is loaded. | a. Reduce emissions of organic HAP by 98 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices as specified in § 63.1105; or<br>process piping designed to collect the HAP-containing vapors displaced from tank trucks or railcars during loading and to route it to a process, a fuel gas system, or a vapor balance system, as specified in § 63.1105. |
| 6. Equipment (as defined in § 63.1101) that contains or contacts organic HAP. | The equipment contains or contacts ≥5 weight-percent organic HAP; and<br>the equipment is in service ≥300 hours per year; and<br>the equipment is not in vacuum service ..... | Comply with the requirements of subpart UU of this part. |
| 7. Processes that generate process wastewater or maintenance wastewater (as defined in paragraph (e)(2) of this section). | The wastewater contains any of the following HAP: Benzene, cumene, ethyl benzene, hexane, methyl ethyl ketone, naphthalene, phenol, styrene, toluene, o-xylene, m-xylene, p-xylene, or 1,3-butadiene. | Comply with the waste requirements of subpart XX of this part. For ethylene manufacturing process unit waste stream requirements, words have the meanings specified in subpart XX. |
| 8. A heat exchange system (as defined in paragraph (e)(2) of this section). | ..... | Comply with the heat exchange system requirements of subpart XX of this part. |

(f) *Carbon black production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the carbon black production source category (as defined in paragraph (f)(2) of this section), the affected source shall include each carbon black production process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit.

(ii) *Compliance schedule.* The compliance schedule for the carbon black production affected source, as defined in paragraph (f)(1)(i) of this section, is specified in § 63.1102.

(2) *Definitions.*

*Carbon black production* means the production of carbon black by either the furnace, thermal, acetylene, or lampblack processes.

*Carbon black production process unit* means the equipment assembled and connected by hard-piping or duct work

to process raw materials to manufacture, store, and transport a carbon black product. For the purposes of this subpart, a carbon black production process unit includes reactors and associated operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A carbon black production process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

*Dryer* means a rotary-kiln dryer that is heated externally and is used to dry wet pellets in the wet pelletization process.

*Main unit filter* means the filter that separates the carbon black from the tailgas.

*Miscellaneous process vents* means all process vents associated with a carbon black production process unit other than the main unit filter, process filter, purge filter, and dryer process vents.

*Process filter* means the filter that separates the carbon black from the conveying air.

*Purge filter* means the filter that separates the carbon black from the dryer exhaust.

(3) *Requirements.* Table 8 of this section specifies the carbon black production standards for existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests, or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 8 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CARBON BLACK PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

| If you own or operate * * * | And if * * * | Then you must * * * |
|---|---|---|
| A main unit filter process vent ..... | The HAP concentration of the emission stream is equal to or greater than 260 parts per million by volume [a]. | a. Reduce emissions of total HAP by using a flare meeting the requirements of subpart SS of this part; or<br>b. Reduce emissions of total HAP by 98 weight-percent or to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(2). |

[a] The weight-percent organic HAP is determined according to the procedures specified in § 63.1104(e).

(g) *Cyanide chemicals manufacturing applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the cyanide chemicals manufacturing source category, the affected source shall include each cyanide chemicals manufacturing process unit located at a major source, as defined in section 112(a) of the Act. The affected source shall also include all waste management units, maintenance wastewater, and equipment (as defined in § 63.1101) that contain or contact cyanide chemicals that are associated with the cyanide chemicals manufacturing process unit.

(ii) *Compliance schedule.* The compliance schedule for the affected source, as defined in paragraph (f)(1)(i) of this section, is specified in § 63.1102.

(2) *Definitions.*

*Andrussow process unit* means a process unit that produces hydrogen cyanide by reacting methane and ammonia in the presence of oxygen over a platinum/rhodium catalyst. An Andrussow process unit begins at the point at which the raw materials are stored and ends at the point at which refined hydrogen cyanide is utilized as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Andrussow process unit.

*Blausaure Methane Anlage (BMA) process unit* means a process unit that produces hydrogen cyanide by reacting methane and ammonia over a platinum catalyst. A BMA process unit begins at the point at which raw materials are stored and ends at the point at which refined hydrogen cyanide is used as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the BMA process unit.

*Byproduct* means a chemical that is produced coincidentally during the production of another chemical.

*Cyanide chemicals manufacturing process unit* or *CCMPU* means the equipment assembled and connected by hard-piping or duct work to process raw materials to manufacture, store, and transport a cyanide chemicals product. A cyanide chemicals manufacturing process unit may be any one of the following: an Andrussow process unit, a BMA process unit, a sodium cyanide process unit, or a Sohio hydrogen cyanide process unit. For the purpose of this subpart, a cyanide chemicals manufacturing process unit includes reactors and associated unit operations; associated recovery devices; and any feed, intermediate and product storage vessels, product transfer racks, and connected ducts and piping. A cyanide chemicals manufacturing process unit includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, and control devices or systems.

*Cyanide chemicals product* means either hydrogen cyanide or sodium cyanide.

*Dry-end process vent* means a process vent originating from the drum filter or any other unit operation in the dry end of a sodium cyanide manufacturing process unit. For the purposes of this subpart, the dry end of the sodium cyanide process unit begins in the unit

operation where water is removed from the sodium cyanide, usually in the drum filter, and ends when the sodium cyanide is used as a raw material in a downstream process, or is shipped offsite.

*Raw hydrogen cyanide* means hydrogen cyanide that has not been through the refining process. Raw hydrogen cyanide usually has a hydrogen cyanide concentration less than 10 percent.

*Refined hydrogen cyanide* means hydrogen cyanide that has been through the refining process. Refined hydrogen cyanide usually has a hydrogen cyanide concentration greater than 99 percent.

*Refining process* means the collection of equipment in a cyanide chemicals manufacturing processing unit used to concentrate raw hydrogen cyanide from a concentration less than 10 percent to refined hydrogen cyanide at a concentration greater than 99 percent.

*Sodium cyanide process unit* means a process unit that produces sodium cyanide by reacting hydrogen cyanide and sodium hydroxide via the neutralization, or wet, process. A sodium cyanide process unit begins at the unit operation where refined hydrogen cyanide is reacted with sodium hydroxide and ends at the point the solid sodium cyanide product is shipped offsite or used as a raw material in a downstream process. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide prior to the refining process, the unit operation where sodium cyanide is formed is not considered to be part of the sodium cyanide process unit. For this type of process, the sodium cyanide process unit begins at the point that the aqueous sodium cyanide stream leaves the unit operation where the sodium cyanide is formed.

*Sohio hydrogen cyanide process unit* means a process unit that produces hydrogen cyanide as a byproduct of the acrylonitrile production process when acrylonitrile is manufactured using the Sohio process. A Sohio hydrogen cyanide process unit begins at the point the hydrogen cyanide leaves the unit operation where the hydrogen cyanide is separated from the acrylonitrile (usually referred to as the light ends column). The Sohio hydrogen cyanide process unit ends at the point refined hydrogen cyanide is used as a raw material in a downstream process or is shipped offsite. If raw hydrogen cyanide is reacted with sodium hydroxide to form sodium cyanide, prior to the refining process, the unit operation where sodium cyanide is formed is considered to be part of the Sohio hydrogen cyanide process unit.

*Wet-end process vent* means a process vent originating from the reactor, crystallizer, or any other unit operation in the wet end of the sodium cyanide process unit. For the purposes of this subpart, the wet end of the sodium cyanide process unit begins at the point at which the raw materials are stored and ends just prior to the unit operation where water is removed from the sodium cyanide, usually in the drum filter.

(3) *Requirements.* Table 9 of this section specifies the cyanide chemicals manufacturing standards applicable to existing and new sources. Applicability assessment procedures and methods are specified in § 63.1104. An owner or operator of an affected source is not required to perform applicability tests, or other applicability assessment procedures if they opt to comply with the most stringent requirements for an applicable emission point pursuant to this subpart. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

(4) *Determination of overall HAP emissions reductions for a process unit.* (i) The owner or operator shall determine the overall HAP emissions reductions for process vents in a process unit using Equation 1 of this section. The overall organic HAP emissions reductions shall be determined for all process vents in the process unit.

$$RED_{CCMPU} = \left( \frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(\frac{R_i}{100}\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)} \right) * 100 \qquad \text{(Eq. 1)}$$

Where:

$RED_{CCMPU}$ = Overall HAP emission reduction for the group of process vents in the CCMPU, percent.

$E_{unc,i}$ = Uncontrolled HAP emissions from process vent i that is controlled by using a combustion, recovery, or recapture device, kg/hr.

n = Number of process vents in the process unit that are controlled by using a combustion, recovery, or recapture device.

$R_i$ = Control efficiency of the combustion, recovery, or recapture device used to control HAP emissions from vent i, determined in accordance with paragraph (g)(4)(ii) of this section.

$E_{unc,j}$ = Uncontrolled HAP emissions from process vent j that is not controlled by using a combustion, recovery, or recapture device, kg/hr.

m = Number of process vents in the process unit that are not controlled by using a combustion, recovery, or recapture device.

(ii) The control efficiency, $R_i$, shall be assigned as specified in paragraph (g)(4)(i)(A) or (B) of this section.

(A) If the process vent is controlled using a flare in accordance with the provisions of § 63.987, or a combustion device in accordance with the provisions of § 63.988(b)(2), for which a performance test has not been conducted, the control efficiency shall be assumed to be 98 percent.

(B) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of § 63.997, the control efficiency shall be the efficiency determined from the performance test.

TABLE 9 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?

| If you own or operate * * * | And if * * * | Then you must * * * |
|---|---|---|
| 1. A storage vessel | The storage vessel contains refined hydrogen cyanide. | a. Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or<br>b. Reduce emissions of hydrogen cyanide by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(1) or (d). |
| 2. One or more process vents from continuous unit operations in an Andrussow or BMA process unit. | | During all periods, except periods of startup, shutdown, and malfunction, either:<br>a. Reduce overall emissions of total HAP from the collection of process vents from continuous unit operations in the process unit by 99 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or<br>b. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by 99 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d). |
| 3. One or more process vents from continuous unit operations in an Andrussow or BMA process unit. | | During periods of startup, shutdown, and malfunction, either:<br>a. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by using a flare meeting the requirements of § 63.982(b); or<br>b. Reduce emissions of total HAP from each process vent from a continuous unit operation in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d). |
| 4. One or more process vents from continuous unit operations in a Sohio hydrogen cyanide process unit. | | a. Reduce overall emissions of hydrogen cyanide from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements specified in § 63.982(a)(2); or<br>b. Reduce emissions of hydrogen cyanide from each process vent from a continuous unit operation in the process unit by using a flare meeting the requirements of § 63.982(b); or<br>c. Reduce emissions of hydrogen cyanide from each process vent from a continuous unit operation in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d). |

TABLE 9 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A CYANIDE CHEMICALS MANUFACTURING EXISTING OR NEW AFFECTED SOURCE?—Continued

| If you own or operate * * * | And if * * * | Then you must * * * |
|---|---|---|
| 5. One or more wet-end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit. | ..... | a. Reduce overall emissions of total HAP from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements § 63.982(a)(2); or<br>b. Reduce emissions of total HAP from each wet-end process vent in the process unit by using a flare meeting the requirements of § 63.982(b); or<br>c. Reduce emissions of total HAP from each wet-end process vent in the process unit by 98 weight-percent or a concentration of 20 parts per million by volume, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d). |
| 6. One or more dry-end process vents, as defined in paragraph (g)(2) of this section, in a sodium cyanide process unit. | ..... | a. Reduce overall emissions of sodium cyanide from the collection of process vents from continuous unit operations in the process unit by 98 weight-percent in accordance with paragraph (g)(4) of this section. Any control device used to reduce emissions from one or more process vents from continuous unit operations in the process unit must meet the applicable requirements of § 63.982(a)(2); or<br>b. Reduce emissions of sodium cyanide from each dry-end process vent in the process unit by 98 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of § 63.982(c)(2) or (d). |
| 7. A transfer rack ..... | The transfer rack is used to load refined hydrogen cyanide into tank trucks and/or rail cars. | a. Reduce emissions of hydrogen cyanide by using a flare meeting the requirements of § 63.982(b); or<br>b. Reduce emissions of hydrogen cyanide by 98 weight-percent or a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements specified in § 63.982(c)(1), (c)(2), or (d). |
| 8. A new cyanide chemicals manufacturing process unit that generates process wastewater. | The process wastewater is from HCN purification, ammonia purification, or flare blowdown. | Achieve a combined removal and control of HAP from the wastewater of 93 weight-percent. |
| 9. A cyanide chemicals manufacturing process unit that generates maintenance wastewater. | The maintenance wastewater contains hydrogen cyanide or acetonitrile. | Comply with the requirements of § 63.1106(b). |
| 10. An item of equipment listed in § 63.1106(c)(1). | The item of equipment meets the criteria specified in § 63.1106(c)(1) through (3) and either (c)(4)(i) or (ii).. | Comply with the requirements in Table 35 of subpart G of this part. |
| 11. Equipment, as defined under § 63.1101 ..... | The equipment contains or contacts hydrogen cyanide and operates equal to or greater than 300 hours per year. | Comply with either subpart TT or UU of this part, with the exception that open-ended lines that contain or contact hydrogen cyanide are not to be capped. |

(h) *Spandex production applicability, definitions, and requirements*—(1) *Applicability*—(i) *Affected source.* For the spandex production (as defined in paragraph (h)(2) of this section) source category, the affected source shall comprise all emission points listed in paragraphs (h)(1)(i)(A) through (C) of this section that are associated with a reaction spinning spandex production process unit located at a major source, as defined in section 112(a) of the Act.

(A) All process vents (as defined in § 63.1101).

(B) All storage vessels (as defined in § 63.1101) that store liquids containing organic HAP.

(C) All spandex fiber spinning lines using a spinning solution having organic HAP.

(ii) *Exceptions.* The emission points listed in paragraphs (h)(1)(ii)(A) and (B)

of this section are in the spandex production source category but are not subject to the requirements of paragraph (h)(3) of this section.

(A) Equipment that is located within a spandex production process unit that is subject to this subpart but does not contain organic HAP.

(B) Vessels storing organic liquids that contain organic HAP as impurities.

(iii) *Compliance schedule.* The compliance schedule for affected sources, as defined in paragraph (h)(1)(i) of this section, is specified in paragraph (b) of § 63.1102.

(2) *Definitions.*

*Spandex or Spandex fiber* means a manufactured synthetic fiber in which the fiber-forming substance is a long-chain polymer comprised of at least 85 percent by mass of a segmented polyurethane.

*Spandex production* means the production of synthetic spandex fibers.

*Spandex production process unit* means a process unit that is specifically used for the production of synthetic spandex fibers.

*Fiber spinning line* means the group of equipment and process vents associated with spandex fiber spinning operations. The fiber spinning line includes the blending and dissolving tanks, spinning solution filters, spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, draw, or dry on the wet belt the spun fiber.

(3) *Requirements.* Table 10 to this section specifies the spandex production source category requirements for new and existing sources. An owner or operator must perform the applicability assessment procedures and methods for process vents specified in § 63.1104, excluding paragraphs (b)(1), (d), (g), (h), (i), (j), (l)(1), and (n). General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Minimization of emissions from startup, shutdown, and malfunctions must be addressed in the startup, shutdown, and malfunction plan required by § 63.1111; the plan must also establish reporting and recordkeeping of such events. Procedures for approval of alternate means of emission limitations are specified in § 63.1113.

TABLE 10 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A SPANDEX PRODUCTION PROCESS UNIT AT A NEW OR EXISTING SOURCE?

| If you own or operate * * * | And if * * * | Then you must * * * |
|---|---|---|
| 1. A storage vessel (as defined in § 63.1101) that stores liquid containing organic HAP. | The maximum true vapor pressure of the organic HAP is ≥ 3.4 kilopascals; and.<br>The capacity of the vessel is ≥ 47 cubic meters. | a. Comply with the requirements of subpart WW of this part; or<br>b. Reduce emissions of organic HAP by 95 weight-percent by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(1). |
| 2. A process vent | | Reduce emissions of organic HAP by 95 weight-percent; or reduce organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS of this part, as specified in § 63.982(a)(2). |
| 3. A fiber spinning line | | Operate the fiber spinning line such that emissions are captured and vented through a closed vent system to a control device that complies with the requirements of subpart SS of this part, as specified in § 63.982(a)(2). If a control device other than a flare is used, HAP emissions must be reduced by 95 weight-percent; or total organic HAP or TOC must be reduced to a concentration of 20 parts per million by volume, whichever is less stringent. |

14. Section 63.1104 is amended by:

a. Revising the last sentence of paragraph (a);

b. Revising the first sentence of paragraph (e);

c. Revising the first sentence of paragraph (f)(1);

d. Revising the last sentence of paragraph (k) introductory text; and

e. Revising the first sentence of paragraph (m)(2)(i) introductory text.

The revisions read as follows:

**§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.**

(a) * * * The owner or operator of a process vent is not required to determine the criteria specified for a process vent that is being controlled in accordance with the applicable weight-percent, TOC concentration, or organic HAP concentration requirement in § 63.1103.

* * * * *

(e) *TOC or organic HAP concentration.* The TOC or organic HAP concentrations, used for TRE index value calculations in paragraph (j) of this section, shall be determined based on paragraph (e)(1) or (k) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. * * *

(f) * * *

(1) Use Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate. * * *

* * * * *

(k) * * * If a process vent flow rate or process vent organic HAP or TOC concentration is being determined for

comparison with the applicable flow rate or concentration value presented in the tables in § 63.1103 to determine control requirement applicability, engineering assessment may be used to determine the flow rate or concentration for the representative operating conditions expected to yield the highest flow rate or concentration.

* * * * *

(m) * * *

(2) *Process change.*

(i) Whenever a process vent becomes subject to control requirements under this subpart as a result of a process change, the owner or operator shall submit a report within 60 days after the performance test or applicability assessment, whichever is sooner.* * *

* * * * *

15. Section 63.1105 is added to read as follows:

**§ 63.1105 Transfer racks.**

(a) *Design requirements.* The owner or operator shall equip each transfer rack with one of the control options listed in paragraphs (a)(1) through (4) of this section.

(1) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(2) A closed vent system designed to collect HAP-containing vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a control device other than a flare. The owner or operator must meet the requirements of § 63.982(a)(3).

(3) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a process where the HAP vapors shall predominantly meet one of, or a combination of, the ends specified in paragraphs (a)(3)(i) through (iv) of this section or to a fuel gas system. The owner or operator must meet the requirements of § 63.982(a)(3).

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not HAP;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(4) Process piping designed to collect the HAP vapors displaced from tank trucks or railcars during loading and to route the collected vapors to a vapor balance system. The vapor balance system must be designed to route the collected HAP vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected HAP vapors to a process.

(b) *Operating requirements.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in paragraph (a) of this section.

(c) *Control device operation.* Whenever HAP emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(d) *Tank trucks and railcars.* The owner or operator shall load HAP-containing materials only into tank trucks and railcars that meet the requirement in paragraph (d)(1) or (2) of this section, and shall maintain the records specified in paragraph (i) of this section.

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in paragraph (h) of this section. Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.63 pound per square inch).

(e) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to the requirements of this paragraph.

(f) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load HAP-containing materials only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(g) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load HAP-containing material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent system or process piping.

(h) *Vapor tightness procedures.* For the purposes of demonstrating vapor tightness to determine compliance with paragraph (d)(2) of this section, the procedures and equipment specified in paragraphs (h)(1) and (2) shall be used.

(1) The pressure test procedures specified in Method 27 of appendix A to 40 CFR part 60.

(2) A pressure measurement device that has a precision of ± 2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(i) *Recordkeeping.* The owner or operator of a transfer rack shall record that the verification of DOT tank certification or Method 27 of appendix A to 40 CFR part 60 testing required in § 63.84(c) has been performed. Various methods for the record of verification can be used such as: A check off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

* * * * *

16. Subpart YY is proposed to be amended by adding § 63.1114 to read as follows:

**§ 63.1114 Implementation and enforcement.**

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as the applicable State, local, or tribal agency. If the EPA Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. Contact the applicable EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the nonopacity emissions standards in § 63.1103(a)(3), (b)(3) through (5), (c)(3), (d)(3), (e)(3), (f)(3), (g)(3) and (4), and (h)(3) under § 63.6(g). Follow the requirements in § 63.1113 to request permission to use an alternative means of emission limitation. Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT DECEMBER 6, 2000

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**AGRICULTURE DEPARTMENT**

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**Internal Revenue Service**

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**Agricultural Marketing Service**

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**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

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**DEFENSE DEPARTMENT**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 2346/P.L. 106–521**
To authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment. (Nov. 22, 2000; 114 Stat. 2438)

**H.R. 5633/P.L. 106–522**
District of Columbia Appropriations Act, 2001 (Nov. 22, 2000; 114 Stat. 2440)

**S. 768/P.L. 106–523**
Military Extraterritorial Jurisdiction Act of 2000 (Nov. 22, 2000; 114 Stat. 2488)

**S. 1670/P.L. 106–524**
To revise the boundary of Fort Matanzas National Monument, and for other purposes. (Nov. 22, 2000; 114 Stat. 2493)

**S. 1880/P.L. 106–525**
Minority Health and Health Disparities Research and Education Act of 2000 (Nov. 22, 2000; 114 Stat. 2495)

**S. 1936/P.L. 106–526**
Bend Pine Nursery Land Conveyance Act (Nov. 22, 2000; 114 Stat. 2512)

**S. 2020/P.L. 106–527**
To adjust the boundary of the Natchez Trace Parkway, Mississippi, and for other purposes. (Nov. 22, 2000; 114 Stat. 2515)

**S. 2440/P.L. 106–528**
Airport Security Improvement Act of 2000 (Nov. 22, 2000; 114 Stat. 2517)

**S. 2485/P.L. 106–529**
Saint Croix Island Heritage Act (Nov. 22, 2000; 114 Stat. 2524)

**S. 2547/P.L. 106–530**
Great Sand Dunes National Park and Preserve Act of 2000 (Nov. 22, 2000; 114 Stat. 2527)

**S. 2712/P.L. 106–531**
Reports Consolidation Act of 2000 (Nov. 22, 2000; 114 Stat. 2537)

**S. 2773/P.L. 106–532**
Dairy Market Enhancement Act of 2000 (Nov. 22, 2000; 114 Stat. 2541)

**S. 2789/P.L. 106–533**
To amend the Congressional Award Act to establish a Congressional Recognition for Excellence in Arts Education Board. (Nov. 22, 2000; 114 Stat. 2545)

**S. 3164/P.L. 106–534**
Protecting Seniors From Fraud Act (Nov. 22, 2000; 114 Stat. 2555)

**S. 3194/P.L. 106–535**
To designate the facility of the United States Postal Service located at 431 North George Street in Millersville, Pennsylvania, as the ''Robert S. Walker Post Office''. (Nov. 22, 2000; 114 Stat. 2559)

**S. 3239/P.L. 106–536**
To amend the Immigration and Nationality Act to provide special immigrant status for certain United States international broadcasting employees. (Nov. 22, 2000; 114 Stat. 2560)

**Last List November 24, 2000**

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