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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB70

Distance Learning and Telemedicine Loan and Grant Program; Correction

AGENCY: Rural Utilities Service, USDA.

ACTION: Correction to direct final rule.

SUMMARY: This document contains a correction to the direct final rule, which was published Wednesday, January 23, 2002 (67 FR 3039). The regulations related to requirements for submitting an application for financial assistance affecting the grant program.

DATES: The direct final rule, which published at 67 FR 3039, and the correction, are effective March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Morgan, Chief, DLT Branch, Advanced Services Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1550, Washington, DC 20250–1550. Telephone: 202–720–0413; e-mail at *mmorgan@rus.usda.gov;* or, Fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the direct final rule contains an error and information that may be misleading and is in need of clarification.

Correction of Publication

According, the publication on January 23, 2002, which was the subject of FR Doc. 02–1537, is corrected as follows:

On page 3041, in the first column, in amendatory instruction 9., in the second line, ''(a)(4)'' should read ''(b)(4)''.

§ 1703.126 [Corrected]

On the same page, in the same column, in §1703.126, in the first line following the section heading, ''(a)'' should read ''(b)''.

Dated: March 27, 2002.

Blaine D. Stockton,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–7927 Filed 4–3–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–94–AD; Amendment 39–12697; AD 2002–07–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 series airplanes. This action requires revising the Airplane Flight Manual to prohibit operation of the auxiliary power unit (APU) during deicing. This action is necessary to prevent ingestion of deicing fluid into the APU, which could cause uncontained failure of the turbine wheel of the APU, and result in failed and uncontained parts penetrating the aft cabin pressure bulkhead, and consequent possible injury to the cabin crew or passengers. This action is intended to address the identified unsafe condition.

DATES: Effective April 19, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–94–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 information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Tom Rodriquez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that uncontained failure of the auxiliary power unit (APU) has occurred on three Fokker Model F.28 Mark 0100 series airplanes. In all cases, the overspeed of the APU caused uncontained failure of the turbine wheel of the APU with consequent penetration of the aft pressure bulkhead. Investigation revealed that deicing fluid was ingested into the APU inlet. The deicing fluid acted as an additional fuel source, which resulted in runaway acceleration, leading to failure of the turbine wheel. The deicing fluid entered into the APU through the intake air inlet on the upper fuselage surface. This intake air inlet is open only during operation of the APU. Subsequent to the first two occurrences of APU overspeed and turbine wheel failure, operators took actions to abate the occurrences of deicing fluid getting into the APU inlet through additional warnings to flight crews and the personnel performing the deicing. With the most recent event, the FAA has determined that those actions have not been totally effective and additional actions are warranted. Ingestion of deicing fluid into the APU could cause uncontained failure of the turbine wheel of the APU due to overspeed, and result in failed and uncontained parts penetrating the aft cabin pressure bulkhead, and consequent possible injury to the cabin crew or passengers.

Similar Design of the Intake Air Inlet

The APU intake air inlet operation and location on Fokker Model F.28 Mark 0100 series airplanes is the same on Fokker Model F.28 Mark 0070, 1000, 2000, 3000, and 4000 series airplanes; therefore, all these models may be subject to this same unsafe condition.

U.S. Type Certification of the Airplane

These series airplanes are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent ingestion of deicing fluid into the APU, which could cause uncontained failure of the turbine wheel of the APU and result in failed and uncontained parts penetrating the aft cabin pressure bulkhead, and consequent possible injury to the cabin crew or passengers. This AD requires revision of the Limitations Section of the Airplane Flight Manual to prohibit operation of the APU during deicing.

Determination of Rule's Effective Date

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

Both major airlines operating the F.28 Mark 0100 series airplanes have voluntarily applied the restriction to their operations procedures to prohibit operation of the APU during deicing. In consideration of that information, the FAA has determined that telegraphic notification of this action to those operators is not necessary, since all operators are currently in compliance. However, the issuance of this immediately adopted rule is necessary to ensure that any affected airplane that is imported and placed on the U.S. Register in the future will be required to be in compliance as well. Issuance of this rule will ensure that the AFM is revised accordingly in all affected airplanes, prior to the time it is permitted to operate in the U.S.

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–94–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–07–03 Fokker Services B.V.: Amendment 39–12697. Docket 2002–NM–94–AD.

Applicability: All Model F.28 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ingestion of deicing fluid into the auxiliary power unit (APU), which could cause uncontained failure of the turbine wheel of the APU, and result in failed and uncontained parts penetrating the aft cabin pressure bulkhead, and consequent possible injury to the cabin crew or passengers; accomplish the following:

Revising the Airplane Flight Manual (AFM)

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following statement (this may be accomplished by inserting a copy of this AD into the AFM): ''APU operations during deicing is prohibited.''

Alternative Methods of Compliance

(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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Effective Date

(d) This amendment becomes effective on April 19, 2002.

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8172 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30302; Amdt. No. 2099]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standards Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase:

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription:

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The application FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 29, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follow:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending § 97.23 VOR, VOR/DME, VOR or TRACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows

* * * *Effective April 18, 2002*

San Jose, CA, San Jose International VOR–A, Orig
San Jose, CA, San Jose International VOR/DME RWY 30R, Orig
San Jose, CA, San Jose International RNAV (GPS) RWY 12L Orig
San Jose, CA, San Jose International RNAV (GPS) RWY 30R, Orig
Red Wing NM, Red Wing Regional, ILS RWY 9, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 13R, Amdt 6
Dallas-Fort Worth, TX, Dallas/Fort Worth International, CONVERGING ILS RWY 13R, Amdt 5
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 17L Amdt 2
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 17R, Amdt 21
Dallas-Fort Worth, TX, Dallas/Fort Worth International, CONVERGING ILS RWY 17R, Amdt 7
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 31R, Amdt 12
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Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 35R, Amdt 2
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 13R, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 17L Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, GPS RWY 17L, Orig CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 17R, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, GPS RWY 17R, Orig CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 31R, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, GPS RWY 31R, Orig-A CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 35L Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, GPS RWY 35L Orig CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 35R, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, GPS RWY 35R, Orig CANCELLED
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 36L, Orig
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 36R, Orig

* * * Effective May 16, 2002

Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 22R, Amdt 1

* * * Effective June 13, 2002

Sidney MT, Sidney-Richland Muni, RNAV (GPS) RWY 1, Orig
Sidney MT, Sidney-Richland Muni, RNAV (GPS) RWY 19, Orig
Sidney MT, Sidney-Richland Muni, GPS RWY 1, Orig, CANCELLED
Sidney MT, Sidney-Richland Muni, GPS RWY 19, Orig, CANCELLED
Sidney MC, Shelby Muni, RNAV (GSP) RWY 5, Orig

The FAA published an Amendment in Docket No. 30300, Amdt. No. 2097 to Part 97 of the Federal Aviation Regulations (Vol. 67 No. 56 Page; 13271 dated Friday, March 22, 2002) under section 97.23 effective 16 May 2002 is hereby rescinded:

Sacramento, CA, Sacramento Mather, VOR RWY 4R, Orig-D

[FR Doc. 02–8148 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30303; Amdt. No. 3000]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase:

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPS effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 29, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective Upon Publication.

FDC date	STATE	CITY	AIRPORT	FDC NUMBER	SUBJECT
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE ...	2/2083	ILS RWY 20L, AMDT 7B
03/11/02	GA	ATLANTA	DEKALB-PEACHTREE ...	2/2084	VOR/DME OR GPS RWY 20L, AMDT 1A
03/11/02	GA	ATLANTA	THE WILLIAM B. HARTSFIELD ATLANTA INTL.	2/2089	RNAV (GPS) RWY 27L ORIG
03/12/02	NY	NEW YORK	JOHN F. KENNEDY	2/2149	RNAV (GPS)RWY 31R, ORIG

FDC date	STATE	CITY	AIRPORT	FDC NUMBER	SUBJECT
03/13/02	GA	METTER	METTER MUNI	2/2172	NDB OR GPS RWY 10, AMDT 2
03/14/02	OH	ZANESVILLE	ZANESVILLE MUNI	2/2203	VOR OR GPS RWY 4, AMDT 6
03/14/02	OH	OTTAWA	PUTNAM COUNTY	2/2209	VOR OR GPS RWY 27, AMDT 1
03/14/02	OH	TIFFIN	SENECA COUNTY	2/2210	VOR OR GPS RWY 6, AMDT 8
03/14/02	OH	OTTAWA	PUTNAM COUNTY	2/2211	NDB RWY 27, AMDT 1A
03/14/02	OH	TIFFIN	SENECA COUNTY	2/2212	NDB RWY 24, AMDT 7A
03/14/02	OH	TIFFIN	SENECA COUNTY	2/2213	GPS RWY 24, ORIG
03/14/02	OH	BLUFFTON	BLUFFTON	2/2214	VOR OR GPS RWY 23, AMDT 6
03/14/02	OH	FOSTORIA	FOSTORIA METROPOLITAN.	2/2215	VOR OR GPS-A, AMDT 3A
03/14/02	OH	FOSTORIA	FOSTORIA METROPOLITAN.	2/2216	NDB OR GPS RWY 27, AMDT 4B
03/14/02	OH	KENTON	HARDIN COUNTY	2/2217	VOR/DME RNAV OR GPS RWY 22, AMDT 1
03/14/02	OH	KENTON	HARDIN COUNTY	2/2218	VOR OR GPS–A, AMDT 3
03/14/02	OH	UPPER SANDUSKY	WYANDOT COUNTY	2/2219	VOR OR GPS–A, AMDT 3
03/15/02	GA	BRUNSWICK	GLYNCO JETPORT	2/2240	ILS RWY 7, AMDT 8
03/15/02	GA	BRUNSWICK	GLYNCO JETPORT	2/2241	VOR/DME OR GPS–B, AMDT 7
03/15/02	GA	BRUNSWICK	BLYNCO JETPORT	2/2242	NDB RWY 7, AMDT 10
03/19/02	MN	RED WING	RED WING REGIONAL	2/2276	RNAV (GPS) RWY 9, ORIG
03/19/02	MN	RED WING	RED WING REGIONAL	2/2277	RNAV (GPS) RWY 27, ORIG
03/20/02	NC	BEAUFORT	MICHAEL J. SMITH FIELD.	2/2325	RNAV (GPS) RWY 14, ORIG
03/20/02	IN	GRIFFITH	GRIFFITH-MERRILLVILLE.	2/2333	VOR OR GPS RWY 8, AMDT 7
03/20/02	IN	LOGANSPORT	LOGANSPORT MUNI	2/2335	NDB RWY 9, AMDT 2
03/21/02	IA	PELLA	PELLA MUNI	2/2347	NDB RWY 34, AMDT 7A
03/25/02	IN	EVANSVILLE	EVANSVILLE REGIONAL	2/2453	NDB OR GPS RWY 22, AMDT 12A
03/25/02	IN	EVANSVILLE	EVANSVILLE REGIONAL	2/2454	ILS RWY 22, AMDT 20A
03/25/02	IN	EVANSVILLE	EVANSVILLE REGIONAL	2/2455	RADAR-1, AMDT 5A
03/25/02	IN	EVANSVILLE	EVANSVILLE REGIONAL	2/2458	VOR OR GPS RWY 4, AMDT 5B

[FR Doc. 02–8147 Filed 4–03–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–037]

Drawbridge Operation Regulations: Hutchinson River, NY

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 for the Pelham Bay railroad bridge, mile 0.5, across the Hutchinson River at New York. This temporary deviation will allow the bridge to remain closed to navigation from 10 a.m. on April 18, 2002 through 5 a.m. on April 19, 2002, and from 10 a.m. on April 22, 2002 through 5 a.m. on April 23, 2002, to facilitate repairs at the bridge.

DATES: This deviation is effective from April 18, 2002 through April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The bridge owner, the National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, replacement of pinion gears and the rack, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

The Coast Guard and the owner of the bridge coordinated this closure with the mariners that normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system. Therefore, as a result of that coordination effort, a temporary deviation from the drawbridge operation regulations has been approved. Under this temporary deviation the Pelham Bay railroad bridge will not open for vessel traffic from 10 a.m. on April 18, 2002 through 5 a.m. on April 19, 2002, and from 10 a.m. on April 22, 2002 through 5 a.m. on April 23, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 21, 2002.

G.N. Naccara,

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

[FR Doc. 02–8182 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–181]

RIN 2115–AE84 and 2115–AA97

Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the effective period of the regulated navigation area (RNA) and safety and security zones published October 10, 2001. This change will extend the effective date of the temporary final rule until August 15, 2002, allowing adequate time for informal rulemaking to develop a permanent rule. This rule will continue to prohibit vessels from entering certain areas of the port and

impose restrictions on vessel operations in other areas.

DATES: Sections 165.T01–165 and 165.T01–166 added at 66 FR 15161 effective September 28, 2001 through April 8, 2002 are extended in effect through August 15, 2002. Sections 165.T01–165(c) and 165.T01–166(b) are revised effective April 4, 2002 and will remain effective until August 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 10, 2001, we published a temporary final rule (TFR) entitled ''Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (66 FR 51558–51562). The effective period for this rule was from September 28, 2001, through April 8, 2002. Although the rule was published without advance notice of proposed rulemaking, an opportunity for public comment was provided. The comment period closed on December 10, 2001. The Coast Guard received no letters commenting on the temporary rule. No public hearing was requested, and none was held.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original TFR was urgently required to facilitate emergency services responding to terrorist attacks upon the World Trade Center in Manhattan, NY, and to prevent future terrorist strikes within and adjacent to the Port of New York/New Jersey.

It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Port of New York.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed. There is no indication that the present TFR has been burdensome on the maritime public. The public was invited to comment upon or suggest modifications to the scope of the existing TFR by submitting written comments within 60 days of its publication in the **Federal Register**. None were received.

Background and Purpose

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. Federal, state and local personnel are engaged in ongoing efforts to secure other potential terrorist targets from attack. The Coast Guard established regulated navigation areas (RNAs) and safety and security zones within defined areas of water in order to facilitate emergency response and rescue activities, protect human life, and safeguard vessels and waterfront facilities from sabotage or terrorist attacks.

As we mentioned in the original TFR, these regulations were designed to provide the Captain of the Port of New York with maximum flexibility to respond to emergent threats and dangerous conditions. When less stringent security measures are required, the Captain of the Port communicates relaxed enforcement policies to the public. As a result, the full scope of these regulations is rarely imposed. Nevertheless, the flexibility to utilize those measures permitted by the TFR and required by the circumstances is vital to ensure port security in the present environment.

The temporary rule is only effective until April 8, 2002. The Coast Guard is extending the effective date of this rule until August 15, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

Small Entities

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

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking Of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In temporary § 165.T01–165, revise paragraph (c) to read as follows:

§ 165.T01–165 Regulated Navigation Area: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(c) *Effective dates.* This section is effective from September 28, 2001 through August 15, 2002.

* * * * *

3. In temporary § 165.T01–166, revise paragraph (b) to read as follows:

§ 165.T01–166 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) *Effective dates.* This section is effective from September 28, 2001 through August 15, 2002.

* * * * *

Dated: March 27, 2002.

G.N. Naccara,

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

[FR Doc. 02–8079 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

36 CFR Part 703

[Docket No. LOC 02–1]

Disclosure or Production of Records or Information

AGENCY: Library of Congress.

ACTION: Final regulation.

SUMMARY: The Library of Congress issues this final regulation to include, in addition to information about public availability of Library of Congress records, the information contained in new Library of Congress Regulation 1917–4, Testimony by Employees and Production of Documents in Certain Legal Proceedings Where the Library is Not a Party (see 36 CFR 703.10 *et seq.*). This new regulation centralizes the Library's determinations, to the greatest extent possible, concerning responses to subpoenas in matters where the Library

is not a party. Further it sets forth the standards by which the Library will comply or not with such subpoenas and specifies the means of serving those subpoenas. The regulation also gives due consideration to the particular needs of the Congressional Research Service, the Copyright Office, and the Law Library.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: This Regulation sets forth the policy and procedures of the Library of Congress regarding the testimony of employees and former employees concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Library of Congress, as witnesses in legal proceedings and the production or disclosure of information contained in Library of Congress documents for use in legal proceedings where the Library is not a party, pursuant to a request, order, or subpoena (collectively referred to in this Regulation as a ''demand'').

A. This Regulation applies to:

(1) State court proceedings (including grand jury proceedings);

(2) Federal court proceedings; and

(3) State and local legislative and administrative proceedings.

B. This Regulation does not apply to:

(1) Matters that are not related to the Library of Congress but relate solely to an employee's personal dealings;

(2) Congressional demands for testimony or documents;

(3) Any demand relating to activity within the scope of Title 17 of the United States Code (the Copyright Act and related laws). These are governed by Copyright Office regulations, which provide for different procedures and for service on the General Counsel of the Copyright Office. *See* 37 CFR 201.1, sec. 203, sec. 204, and sec. 205.

C. The purpose of this Regulation is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of the Library of Congress among private litigants, to ensure that public funds are not used for private purposes, to ensure the protection of Congress' interests, and to establish centralized procedures for deciding whether or not to approve testimony or the production of documents.

List of Subjects in 36 CFR part 703

Archives and records, Libraries.

Final Regulation

In consideration of the foregoing the Library of Congress revises 36 CFR part 703 as follows:

PART 703—DISCLOSURE OR PRODUCTION OF RECORDS OR INFORMATION

Subpart A—Availability of Library of Congress Records

Subpart B—testimony by Employees and Production of Documents in Certain Legal Proceedings Where the Library Is Not a Party

Authority: 2 U.S.C. 136.

Subpart A—Availability of Library of Congress Records

§ 703.1 Purpose and scope of this subpart.

(a) This subpart implements the policy of the Library with respect to the public availability of Library of Congress records. Although the Library is not subject to the Freedom of Information Act, as amended (5 U.S.C. 552), this subpart follows the spirit of that Act consistent with the Library's duties, functions, and responsibilities to the Congress. The application of that Act to the Library is not to be inferred, nor should this subpart be considered as conferring on any member of the public a right under that Act of access to or information from the records of the Library. Nothing in this subpart modifies current instructions and practices in the Library with respect to handling Congressional correspondence.

(b) The Copyright Office, although a service unit of the Library, is by law (17 U.S.C. 701) subject to the provisions of the Freedom of Information Act, as amended, only for purposes of actions taken under the copyright law. The Copyright Office has published its own regulation with respect to the general availability of information (*see* 37 CFR 201.2) and requests for copyright records made pursuant to the Freedom of Information Act (*see* 37 CFR 203.1 *et seq.*) and the Privacy Act (*see* 37 CFR 204.1 *et seq.*).

§ 703.2 Policy.

(a) Subject to limitations set out in this part, Library of Congress records shall be available as hereinafter provided and shall be furnished as promptly as possible within the Library to any member of the public at appropriate places and times and for an appropriate fee, if any.

(b) The Library shall not provide records from its files that originate in another federal agency or non-federal organization to persons who may not be entitled to obtain the records from the originator. In such instances, the Library shall refer requesters to the agency or organization that originated the records.

(c) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of the Library not to provide records which are part of on-going reviews or other current projects. In response to such requests, the Library will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the Library may release the records unless the same are exempt from disclosure as identified in § 703.5.

§ 703.3 Administration responsibilities.

The administration of this part shall be the responsibility of the Chief, Office Systems Services (OSS), Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–9440, and to that end, the Chief may promulgate such supplemental rules or guidelines as may be necessary.

§ 703.4 Definitions.

(a) *Records* includes all books, papers, maps, photographs, reports, and other documentary materials, exclusive of materials in the Library's collections, regardless of physical form or characteristics, made or received and under the control of the Library in pursuance of law or in connection with the transaction of public business, and retained, or appropriate for retention, by the Library as evidence of the organization, functions, policies, decisions, procedures, operations, or

other activities of the government or because of the informational value of data contained therein. The term refers only to such items in being and under the control of the Library. It does not include the compiling or procuring of a record, nor does the term include objects or articles, such as furniture, paintings, sculpture, three-dimensional models, structures, vehicles, and equipment.

(b) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc. which will permit location or retrieval of the record.

(c) *Records available to the public* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose* or *disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a federal agency.

§ 703.5 Records exempt from disclosure.

(a) The public disclosure of Library records provided for by this part does not apply to records, or any parts thereof, within any of the categories set out below. Unless precluded by law, the Chief, OSS, nevertheless may release records within these categories, except for Congressional correspondence and other materials identified in § 703.5(b)(1), after first consulting with the General Counsel.

(b) Records exempt from disclosure under this part are the following:

(1) Congressional correspondence and other materials relating to work performed in response to or in anticipation of Congressional requests, unless authorized for release by officials of the Congress.

(2) Materials specifically authorized under criteria established by Executive Order to be withheld from public disclosure in the interest of national defense or foreign policy and that are properly classified pursuant to Executive Orders.

(3) Records related solely to the internal personnel rules and practices of the Library. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of a Library function, such as guidelines and procedures used by auditors, investigators, or examiners in the Office of the Inspector General.

(4) Records specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(5) Records containing trade secrets and commercial or financial information obtained from a person as privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(6) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption includes all private or personal information contained in files compiled to evaluate candidates for security clearances.

(7) Materials and information contained in investigative or other records compiled for law enforcement purposes.

(8) Materials and information contained in files prepared in connection with government litigation and adjudicative proceedings, except for those portions of such files which are available by law to persons in litigation with the Library.

(9) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(10) Inter-agency or intra-agency memoranda, letters or other materials that are part of the deliberative process, the premature disclosure of which would inhibit internal communications or be detrimental to a Library function (*e.g.,* case files in the Manuscript Division).

(11) Records containing information customarily subject to protection as privileged in a court or other proceedings such as information protected by the doctor-patient, attorney work product, or attorney-client privilege.

(12) Information submitted by a person to the Library in confidence or which the Library has obligated itself not to disclose such as information received by the Office of the Inspector General through its hotline.

(13) Materials related to specific patron use of the Library's collections, resources, or facilities either on site or off site. This exemption includes:

(i) Reader Records. Library records which identify readers by name, such as registration records, reading room logs or registers, telephone inquiry logs, and charge slips, if retained for administrative purposes.

(ii) Use Records. Users of the Library are entitled to privacy with respect to their presence and use of the Library's facilities and resources. Records pertaining to the use of the Library and of Library collections and subjects of inquiry are confidential and are not to be disclosed either to other readers, to members of the staff who are not authorized, or to other inquirers including officials of law enforcement, intelligence, or investigative agencies, except pursuant to court order or administratively by order of the Librarian of Congress.

(c) Any reasonably segregable portion of a record shall be provided to anyone requesting such records after deletion of the portions which are exempt under this section. A portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context, does not contradict the record being withheld, and can reasonably provide all relevant information.

§ 703.6 Procedure for access to and copying of records.

(a) A request to inspect or obtain a copy of an identifiable record of the Library of Congress shall be submitted in writing to the Chief, OSS, Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540–9440, who shall promptly record and process the request.

(b) Requests for records shall be specific and shall identify the precise records or materials that are desired by name, date, number, or other identifying data sufficient to allow the OSS staff to locate, retrieve, and prepare the record for inspection or copying and to delete exempted matter where appropriate to do so. Blanket or generalized requests (such as ''all matters relating to'' a general subject) shall not be honored and shall be returned to the requester.

(c) Records shall be available for inspection and copying in person during business hours.

(d) Records in media other than print (*e.g.,* microforms and machine-readable media) shall be available for inspection in the medium in which they exist. Copies of records in machine-readable media shall be made in media determined by the Chief, OSS.

(e) Library staff shall respond to requests with reasonable dispatch. Use of a record by the Library or Library employees, however, shall take precedence over any request. Under no circumstances shall official records be removed from Library control without the written authorization of the Librarian.

(f) The Chief, OSS, shall make the initial determination on whether:

(1) The record described in a request can be identified and located pursuant to a reasonable search, and

(2) The record (or portions thereof) may be made available or withheld from disclosure under the provisions of this part. In making the initial determinations, the Chief shall consult with any unit in the Library having a continuing substantial interest in the record requested. Where the Chief finds no valid objection or doubt as to the propriety of making the requested record available, the Chief shall honor the request upon payment of prescribed fees, if any are required by § 703.8.

(g) If the Chief, OSS, determines that a requested record should be withheld, the Chief shall inform the requester in writing that the request has been denied; shall identify the material withheld; and shall explain the basis for the denial. The Chief shall inform the requester that further consideration of the denied request may be obtained by a letter to the General Counsel setting out the basis for the belief that the denial of the request was unwarranted.

(h) The General Counsel shall make the final determination on any request for reconsideration and shall notify the requester in writing of that determination. The decision of the General Counsel shall be the final administrative review within the Library.

(1) If the General Counsel's decision reverses in whole or in part the initial determination by the Chief, OSS, the Chief shall make the requested record, or parts thereof, available to the requester, subject to the provisions of § 703.8.

(2) If the General Counsel's decision sustains in whole or in part the initial determination by the Chief, OSS, the General Counsel shall explain the basis on which the record, or portions thereof, will not be made available.

§ 703.7 Public Reading Facility.

(a) The Chief, OSS, shall maintain a reading facility for the public inspection and copying of Library records. This facility shall be open to the public from 8:30 a.m. to 4:30 p.m., except Saturdays, Sundays, holidays, and such other times as the Library shall be closed to the public.

(b) The General Counsel shall advise the Chief, OSS, of the records to be available in the public reading facility following consultation with the Library managers who may be concerned.

§ 703.8 Fees and charges.

(a) The Library will charge no fees for:

(1) Access to or copies of records under the provisions of this part when the direct search and reproduction costs are less than $10.

(2) Records requested which are not found or which are determined to be exempt under the provisions of this part.

(3) Staff time spent in resolving any legal or policy questions pertaining to a request.

(4) Copies of records, including those certified as true copies, that are furnished for official use to any officer or employee of the federal government.

(5) Copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before the Library, when furnishing such copies is necessary or desirable to the performance of a Library function.

(b) When the costs for services are $10 or more, the Chief, OSS, shall assess and collect the fees and charges set out in appendix A to this part for the direct costs of search and reproduction of records available to the public.

(c) The Chief, OSS, is authorized to waive fees and charges, in whole or in part, where it is determined that the public interest is best served to do so, because waiver is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Persons seeking a waiver or reduction of fees may be required to submit a written statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations made pursuant to the authority set out herein are solely within the discretion of the Chief, OSS.

(d) Fees and charges for services identified in the appendix to this part shall be paid in full by the requester before the records are delivered. Payment shall be made in U.S. funds by personal check, money order, or bank draft made payable to the Library of Congress. The Chief, OSS, shall remit all fees collected to the Director, Financial Services, who shall cause the same to be credited to appropriate accounts or deposited with the U.S. Treasury as miscellaneous receipts.

(e) The Chief, OSS, shall notify a requester and may require an advance deposit where the anticipated fees will exceed $50.

Appendix A to Part 703—Fees and Charges for Services Provided to Requesters of Records

(a) Searches.

(1) There is no charge for searches of less than one hour.

(2) Fees charged for searches of one hour or more are based on prevailing rates. Currently, those charges are:

(i) Personnel searches (clerical): $15 per hour.

(ii) Personnel searches (professional): $25 per hour.

(iii) Reproduction costs: $.50 per page.

(iv) Shipping and mailing fees: variable.

(3) In situations involving the use of computers to locate and extract the requested information, charges will be based on the direct cost to the Library, including labor, material, and computer time.

(b) Duplication of Records. Fees charged for the duplication of records shall be according to the prevailing rates established by the Library's Photoduplication Service, or in the case of machine media duplication, by the Resources Management Staff, Information Technology Services.

(c) Certifications. The fee charges for certification of a record as authentic or a true copy shall be $10.00 for each certificate.

(d) Other Charges. When no specific fee has been established for a service required to meet the request for records, the Chief, OSS, shall establish an appropriate fee based on direct costs in accordance with the Office of Management and Budget Circular No. A–25.

Subpart B—Testimony by Employees and Production of Documents in Certain Legal Proceedings Where the Library Is Not a Party

§ 703.15 Purpose and scope of this subpart.

This subpart sets forth the policy and procedures of the Library of Congress regarding, first, the testimony, as witnesses in legal proceedings where the Library is not a party, of employees and former employees concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Library of Congress, and second, the production or disclosure of information

contained in Library of Congress documents for use in legal proceedings where the Library is not a party, pursuant to a request, order, or subpoena (collectively referred to in this subpart as a ''demand'').

(a) This subpart applies to:

(1) State court proceedings (including grand jury proceedings);

(2) Federal court proceedings; and

(3) State and local legislative and administrative proceedings.

(b) This subpart does not apply to:

(1) Matters that are not related to the Library of Congress but relate solely to an employee's personal dealings;

(2) Congressional demands for testimony or documents;

(3) Any demand relating to activity within the scope of Title 17 of the United States Code (the Copyright Act and related laws). These are governed by Copyright Office regulations, which provide for different procedures and for service on the General Counsel of the Copyright Office. *See* 37 CFR 201.1, sec. 203, sec. 204, and sec. 205.

(c) The purpose of this subpart is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of the Library of Congress among private litigants, to ensure that public funds are not used for private purposes, to ensure the protection of Congress' interests, and to establish centralized procedures for deciding whether or not to approve testimony or the production of documents.

§ 703.16 Policy on presentation of testimony and production of documents.

No Library of Congress employee may provide testimony or produce documents in any proceeding to which this part applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Library of Congress, unless authorized by the General Counsel or his/her designee, or the Director of the Congressional Research Service (CRS) with respect to records and testimony relating to CRS's work for Congress, or the Law Librarian for records and testimony relating to the Law Library's work for Congress or materials prepared for other federal agencies covered by evidentiary privileges. The aforementioned officials (hereinafter ''deciding officials'') will consider and act upon demands under this part with due regard for the interests of Congress, where appropriate, statutory requirements, the Library's interests, and the public interest, taking into account factors such as applicable privileges and immunities, including the deliberative process privilege and the speech or debate clause, the need to conserve the time of employees for conducting official business, the need to avoid spending the time and money of the United States for private purposes, the need to maintain impartiality among private litigants in cases where a substantial government interest is not involved, the established legal standards for determining whether or not justification exists for the disclosure of confidential information and records, and any other purpose that the deciding official deems to be in the interest of Congress or the Library of Congress.

§ 703.17 Procedures when testimony and/or documents are demanded.

A demand for testimony and/or documents by a Library employee must be in writing, must state the nature of the requested testimony and/or specify documents, and must meet the requirements of § 703.15. A demand must also show that the desired testimony or document is not reasonably available from any other source and must show that no document could be provided and used in lieu of testimony. When an employee of the Library receives such a request the employee will immediately forward it, with the recommendation of the employee's supervisors, to the appropriate deciding official under § 703.22 of this part. The deciding official, in consultation with the appropriate offices of the Library or congressional offices, will determine whether or not compliance with the request would be appropriate and will respond as soon as practicable.

§ 703.18 Procedures when an employee's appearance is demanded or documents are demanded.

(a) If the deciding official has not acted by the return date on a subpoena, the employee must appear at the stated time and place (unless advised by the deciding official that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and inform the court (or other interested parties) that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Library or congressional officials and shall respectfully request the court (or other authority) to stay the demand pending receipt of the requested instructions.

(b) If the deciding official has denied approval to comply with the subpoena, and the court or authority rules that the demand must be complied with irrespective of such a denial, the employee upon whom such a demand has been made shall produce a copy of this Part and shall respectfully refuse to provide any testimony or produce any documents. *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(c) The deciding official, as appropriate, will request the assistance of the Department of Justice or the U.S. Attorney's Office or congressional officials where necessary to represent the interests of the Library, the Congress, and the employee in any of the foregoing proceedings.

§ 703.19 Requests for authenticated copies of library documents.

Requests for authenticated copies of Library documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents that would otherwise be released pursuant to the Library's Regulations governing the release of information. The advice of the appropriate deciding official should be obtained concerning the proper form of authentication and information as to the proper person having custody of the record.

§ 703.20 File copies.

The Office of the General Counsel will maintain the official file of copies of all demands served on the Library and deciding officials' responses.

§ 703.21 Effect of this part.

This part is intended only to provide guidance for the internal operations of the Library of Congress and is not intended to, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the Library of Congress or the United States.

§ 703.22 Where to serve demands.

Requesting parties must serve subpoenas:

(a) For Congressional Research Service matters: Director, Congressional Research Service, LM 203, Library of Congress, Washington, DC 20540.

(b) For Law Library matters: Law Librarian, LM 240, Library of Congress, Washington, DC 20540.

(c) For all other matters: General Counsel, LM 601, Library of Congress, Washington, DC 20540.

Dated: March 11, 2002.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–7865 Filed 4–3–02; 8:45 am]

BILLING CODE 1410–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

RIN 2900–AL15

Board of Veterans' Appeals Title Change

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document amends VA regulations to reflect that the ''Director of Administrative Service (014)'' at the Board has been changed to the ''Director, Management and Administration (01E)''.

DATES: Effective Date: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: This final rule merely concerns agency management. Accordingly, we are dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, since this final rule does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

Approved: March 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, under 38 U.S.C. 501, 38 CFR chapter 1 is amended as set forth below:

CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS

In chapter I, revise all references to ''Director, Administrative Service (014)'', ''Director of the Administrative Service (014)'', or ''Director of Administrative Service (014)'' to read ''Director, Management and Administration (01E)''.

[FR Doc. 02–8120 Filed 4–3–02; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Parts 224, 229, 233, 266, 273

Transfer of Functions From the Postal Inspection Service to the Inspector General

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: The Postal Service is amending the Code of Federal Regulations to reflect the role the Inspector General plays in the audit, investigative, and oversight activity of the Postal Service. This is the first comprehensive revision of the Postal Service Inspector General regulations since the independent postal Inspector General came into existence in 1997. The intent of this revision is to remove outdated references to the Inspection Service's duties that are now the responsibility of the Office of Inspector General.

DATES: Effective April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Andrea Bernardo, Managing Counsel, Legal Services, Office of Inspector General, 703–248–4676.

SUPPLEMENTARY INFORMATION: The primary responsibility of the Office of Inspector General is to conduct audits and investigations to prevent, detect, and report fraud, waste, abuse, and mismanagement; to promote efficiency in the programs and operations of the Postal Service; and to provide oversight of the Inspection Service. The 1996 amendments to the Inspector General Act (Act) created an independent inspector general for the Postal Service. The responsibility of serving as the inspector general was removed from the Chief Postal Inspector. The basic purpose of the Act was to strengthen audit and investigative activities in order to obtain greater efficiency and effectiveness in federal government operations. This purpose was to be achieved by consolidating audit and investigative units under a single individual reporting directly to the agency head; providing protections designed to ensure that the new offices had independence and authority to carry out their responsibilities; and by requiring periodic reports to agency heads and Congress on their activities.

Section 2 of the Act specifically provided that the Inspector General shall audit all programs and operations of the Postal Service. With the creation of the independent postal inspector general, representatives of the Inspection Service and the Office of Inspector General met to work out the transition of selected functions from the Inspection Service to the Office of Inspector General. After several negotiation sessions, the two parties agreed to a formal designation of functions. As a result, certain activities formerly performed by the Inspection Service were now to be performed by the Office of Inspector General. References in Title 39 of the Code of Federal Regulations citing the Inspection Service as the party responsible for a variety of audit and oversight duties became outdated. This revision removes incorrect references to the Inspector Service and the Chief Postal Inspector and inserts very limited additional text. A new Part 230, Responsibilities of the Office of Inspector General, which will outline the duties of the Inspector General, will be published separately.

List of Subjects

39 CFR Part 224

Organization and functions (Government agencies).

39 CFR Part 229

Organization and functions (Government agencies).

39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

39 CFR Part 266

Privacy.

39 CFR Part 273

Administrative practice and procedure, Claims, Fraud, Penalties.

For the reasons stated in the preamble, the Postal Service amends 39 CFR as follows:

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

A. Part 224 is amended as follows:

1. The authority citation for part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

§ 224.3 [Amended]

2. Section 224.3 is amended as follows:

a. Paragraph (a) is revised;

b. Paragraph (b)(6) is removed, and paragraphs(b) (7) and (8) are redesigned as (b)(6) and (7) respectively.

c. Paragraph (c) is revised;

d. Paragraph (d) is removed.

The revisions read as follows:

* * * * *

(a) The Postal Inspection Service is headed by the Chief Postal Inspector who also acts as the Chief Security Officer and Defense Coordinator for the Postal Service.

* * * * *

(c) The Inspection Service through the Chief Postal Inspector shall promptly report to the Inspector General the significant activities being carried out by the Inspection Service and on all other matters as required by law.

§ 224.4 [Amended]

6. In sections 224.4(b)(1) and (2), remove the reference to ''§ 224.3(d)'' each place it appears and add in its place ''§ 230.1(c)''.

PART 229—FIELD ORGANIZATIONS

B. Part 229 is amended as follows:

1. The authority citation for part 229 continues to read as follows:

Authority: 39 U.S.C. 401, 402, 403, and 404.

§ 229.2 [Amended]

2. In § 229.2(b)(1), remove ''auditing,''

PART 233—INSPECTION SERVICE AUTHORITY

C. Part 233 is amended as follows:

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. N0. 104–208).

2. The heading for Part 233 is revised to read as set forth above.

§ 233.1 [Amended]

3. In § 233.1 paragraph (c) is revised and in paragraph (d) the words ''or audit'' are removed. The revision to paragraph (c) reads as follows:

* * * * *

(c) Administrative subpoenas may be served by delivering a copy to a person or by mailing a copy to his or her last known address. For the purposes of this provision, delivery of a copy includes handing it to the party or leaving it at the party's office or residence with a person of suitable age and discretion employed or residing therein. Service by mail is complete upon mailing.

PART 266—PRIVACY OF INFORMATION

D. Part 266 is amended as follows:

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.6 [Amended]

2. Section 266.6(a)(1) is amended by adding the following after ''268–2608.'':

* * * * *

(a)***(1)*** Requests submitted to the Office of Inspector General should be submitted to the Freedom of Information Act/Privacy Officer, Office of Inspector General, 1735 North Lynn Street, Arlington, Virginia, 22209–2020.

***

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

E. Part 273 is amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

2. Section 273. 2 (c) is revised to read as follows:

§ 273.2 Definitions.

* * * * *

(c) Investigating Official refers to the Inspector General of the Postal Service or any designee within the United States Office of the Inspector General who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–8105 Filed 4–3–02; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 230

Responsibilities of the Office of Inspector General

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the Code of Federal Regulations to reflect the role the Inspector General plays in the audit, investigative, and oversight activity of the Postal Service. This is the first comprehensive revision of the Postal Service Inspector General regulations since the independent postal Inspector General came into existence in 1997. The intent of this revision is to clarify the responsibilities and duties of the Inspector General for postal customers and employees.

DATES: Effective April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Andrea Bernardo, Managing Counsel, Legal Services, Office of Inspector General, 703–248–4676.

SUPPLEMENTARY INFORMATION: The primary responsibility of the Office of Inspector General is to conduct audits and investigations to prevent, detect, and report fraud, waste, abuse, and mismanagement; to promote efficiency in the programs and operations of the Postal Service, and to provide oversight of the Inspection Service.

The 1996 amendments to the Inspector General Act (Act) created an independent inspector general for the Postal Service. The responsibility of serving as the inspector general was removed from the Chief Postal Inspector. The basic purpose of the Act was to strengthen audit and investigative activities in order to obtain greater efficiency and effectiveness in federal government operations. This purpose was to be achieved by consolidating audit and investigative units under a single individual reporting directly to the agency head; providing protections designed to ensure that the new offices had independence and authority to carry out their responsibilities; and by requiring periodic reports to agency heads and Congress on their activities.

Section 2 of the Act specifically provided that the Inspector General shall audit all programs and operations of the Postal Service. With the creation of the independent postal inspector general, representatives of the Inspection Service and the Office of Inspector General met to work out the transition of selected functions from the Inspection Service to the Office of Inspector General. After several negotiation sessions, the two parties agreed to a formal designation of functions. As a result, certain activities formerly performed by the Inspection Service were now to be performed by the Office of Inspector General. References in Title 39 of Code of Federal Regulations citing the Inspection Service as the party responsible for a variety of audit and oversight duties became outdated. This situation has been thoroughly addressed in this revision. The inaccurate references to the Inspector Service and the Chief

Postal Inspector have been corrected. A new Part 230, relating to the Office of Inspector General, is hereby created.

List of Subjects in 39 CFR Part 230

Freedom of information, Organization functions and authority delegations, Privacy.

For the reasons stated in the preamble, the Postal Service amends 39 CFR by adding the following new part 230, as follows:

PART 230—OFFICE OF INSPECTOR GENERAL

Sec.

Authority: Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3; 39 U.S.C. 401(2).

§ 230.1 Establishment and authority.

(a) There is established, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. App.3), and 39 U.S.C. 410, an independent Office of Inspector General.

(b) The Inspector General reports directly to the nine presidentially appointed Governors and shall not be supervised by, nor report to, the Postmaster General and/or any designee appointed by the Postmaster General.

(c) The Office of Inspector General includes an Inspector General, an Assistant Inspector General for Audit, and an Assistant Inspector General for Investigations. The Office of Inspector General maintains its own legal counsel independent of the Postal Service Law Department for matters that are within the jurisdiction of the Office.

(d) The Office of Inspector General is responsible for detecting and preventing fraud, waste, and abuse in the programs and operations of the Postal Service, and for reviewing existing and proposed legislation and regulations relating to the programs and operations of the Postal Service.

(e) The Inspector General has oversight responsibilities for all activities of the Postal Inspection Service. The Chief Postal Inspector must promptly report to the Inspector General significant activities and other information related to the Inspection Service as required by law.

(f) The Inspector General has sole responsibility for directing the Office of Inspector General, including the authority to select, appoint, and employ such officers and employees that the Inspector General deems necessary and appropriate to fulfill the mission of the Office. In addition, the Inspector General may delegate to such officers and employees of the Inspector General such powers, duties, and responsibilities, as the Inspector General deems necessary and appropriate for the proper functioning of the Office.

(g) All employees in the Office of Inspector General shall take and subscribe to the oath of office required of all Postal Service employees under 39 U.S.C. 1011, and the Inspector General, or designee, is authorized to administer such oath and affirmation.

(h) The Inspector General has the authority to enter into contracts or other arrangements with public agencies and with private entities, and to make such payments as may be necessary to carry out the duties and responsibilities of the Office of Inspector General.

(i) The Inspector General may hire and retain the services of expert consultants and other personnel as necessary to fulfill the duties and responsibilities of the Office.

(j) Except as required by law, the Governors may not transfer to the Inspector General responsibility for performing any of the program activities of the Postal Service.

§ 230. 2 Access to information and other responsibilities.

(a) The Inspector General has authority to have access to all postal records, reports, audits, reviews, documents, papers, information, and other material relating to any matter related to the responsibilities of the Inspector General;

(b) The Inspector General shall be the Investigating Official for purposes of the Program Fraud Civil Remedies Act.

§ 230.3 Cooperation with the Office of Inspector General.

(a) All Postal Service employees shall cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General. Deliberately submitting information known to be false or misleading to the Office of Inspector General or failing to cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General may be grounds for disciplinary or other legal action.

(b) Any employee who has authority to take, direct another to take, recommend or approve any personnel action shall not retaliate against any employee as a reprisal for cooperating and assisting with any Office of Inspector General audit, review, or investigation (including reporting facts or information to the Office of Inspector General that leads to any audit, review, or investigation).

§ 230.4 Arrest and investigative powers of criminal investigators.

Under the authority of 18 U.S.C. 3061, criminal investigators employed by the Office of Inspector General are authorized to perform the following functions in connection with their official duties:

(1) Serve warrants and subpoenas issued under the authority of the United States;

(2) Make arrests without warrant for offenses against the United States committed in their presence;

(3) Make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(4) Carry firearms; and

(5) Make seizures of property as provided by law.

§ 230.5 Release of information.

(a) The Office of Inspector General is responsible for maintaining and storing its own records and for assuring compliance with applicable records management, retention, and disclosure requirements.

(b) The Inspector General or a designee serves as the official custodian of the records and documents of the Office of Inspector General and is responsible for administering the rules and regulations relating to public availability of Postal Service Office of Inspector General records insofar as the information is subject to the provisions of the Freedom of Information Act, contained in Section 552 of Title 5 of the U.S. Code and 39 U.S.C. 410 (c), and/or the Privacy Act, Section 552a of Title 5 of the U.S. Code.

(c) Requests for records and information under the Freedom of Information Act or Privacy Act should be submitted in writing to the Office of Inspector General, Freedom of Information/Privacy Act Officer, located at 1735 N. Lynn Street, Arlington, Virginia, 22209–2020.

(d) The Office of Inspector General shall comply with and adhere to the procedures governing the release of information maintained by the U.S. Postal Service as set forth in Part 265 and related provisions of these regulations to the extent such procedures do not conflict with any provision in this part.

(e) Appeals from the denial of any request for information should be directed to the General Counsel for the

Office of Inspector General, who is responsible for deciding any timely appeals authorized under this section.

(f) Postal Service records in the custody of the Office of Inspector General that contain proprietary information will not be released by the Inspector General without consultation with the appropriate Postal Service official responsible for the record.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–8104 Filed 4–3–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 071–0335; FRL–7164–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on December 31, 2001 and concerns PM–10 emissions from industrial processes. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act) this action approves a local rule that regulates this emission source.

EFFECTIVE DATE: This rule is effective on May 6, 2002.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect a copy of the submitted rule revision at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On December 31, 2001 (66 FR 67497), EPA proposed to approve the following rule into the California SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4201	Particulate Matter Concentration	12/17/92	11/18/93

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comment and EPA Response

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is fully approving the submitted rule into the California SIP.

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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the 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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (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 CAA. 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 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 13, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(194)(i)(C)(*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(C) * * *

(*5*) Rule 4201, adopted on December 17, 1992.

* * * * *

[FR Doc. 02–8062 Filed 4–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0010; FRL–6833–3]

RIN 2070–AB78

Revocation of Certain Obsolete Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: EPA is amending 40 CFR part 180 subpart D to revoke various exemptions from the requirement of a tolerance for eight specific inert ingredients because those substances are no longer used in pesticide products, making these tolerance exemptions unnecessary. The Agency is acting on its own initiative. These regulatory actions are part of the tolerance reassessment requirements of section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. This regulatory action will count for 10 tolerance reassessments toward the August 2002 deadline.

DATES: This rule is effective on August 2, 2002 without further notice, unless EPA receives adverse comment by June 3, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

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**. It is imperative that you identify docket control number OPP–2002–0010 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Treva C. Alston, Registration Division 7505C], Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@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	Crop production
	112	Animal production
	311	Food manufacturing
	32532	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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title _40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0010. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0010 in the subject line on the first page of your response. EPA also encourages you to submit your comments electronically, if at all possible, which will facilitate timely receipt by the Agency and avoid potential delays associated with the processing of government mail.

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 Hwy., 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 OPP–2002–0010. 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 listed 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. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued pursuant to section 408(e) of FFDCA, as amended by the FQPA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments. This action removes various exemptions from the requirement of a tolerance for eight specific inert ingredients because those substances are no longer used in pesticide products. These tolerance exemptions are unnecessary.

This rule is effective on August 2, 2002 without further notice, unless EPA receives adverse comment by June 3, 2002. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will also publish a notice of proposed rulemaking in a future edition of the **Federal Register**. EPA will address the comments on the direct final rule as part of that proposed rulemaking.

III. Background

A. What Action is the Agency Taking?

In **Federal Register** Notices of November 22, 1989, (54 FR 58314) and June 24, 1998, (63 FR 34384)(FRL–5792–3) the Agency removed certain chemicals from its list of pesticide product inert ingredients that were no longer used as inert ingredients in registered pesticide products. At that time, the Agency indicated that future use of these chemcials as inert ingredients in pesticide products would not be permitted unless a petitioner or registrant satisfied all data requirements as identified by the Agency, and the Agency was able to make a determination that the use of the inert ingrediuent will not pose unreasonable risk to human health or the environment.

On its own initiative, the Agency is amending 40 CFR 180.1001, 180.1014, and 180.1046 by revoking exemptions from the requirement of a tolerance for eight inert ingredients that are no longer

used in pesticide products applied to food and feed commodities.

B. Which Tolerance Exemptions are Being Removed?

1. On November 22, 1989, (54 FR 58314) the Agency removed benzene and formaldehyde from its list of chemicals currently used in pesticide products. These substances, both of which were initially classified as List 1 inert ingredients, were determined to no longer be in use as pesticide product inert ingredients and were therefore removed from all lists of inert ingredients. The exemptions from the requirement of a tolerance for the inert ingredient uses of benzene and formaldehyde are now being revoked.

i. In 40 CFR 180.1001(d), there is an exemption from the requirement of a tolerance for benzene. This exemption is for its use as a solvent and cosolvent.

ii. An exemption from the requirement of a tolerance for formaldehyde exists in 40 CFR 180.1001(d). This exemption is limited to not more than 1% of the pesticide formulation with a prescribed use as a preservative for the formulation.

2. On June 24, 1998, (63 FR 34384) EPA removed certain chemicals from its list of pesticide product inert ingredients that are not currently used in pesticide products. Included among those removed inert ingredients were six substances for which exemptions from the requirement of a tolerance existed for their use as inert ingredients and for which the tolerance exemptions are now being revoked.

i. In 40 CFR 180.1001(d) there are exemptions from the requirement of a tolerance for coal (derived only from anthracite and bituminous coals) and coke (from anthracite and bituminous coals only and petroleum). These two tolerance exemptions are limited to soil application and are for use as carriers and extenders.

ii. An exemption from the requirement of a tolerance for dioxane is in 40 CFR 180.1001(d) for dioxane for use as a solvent and cosolvent. In the above cited **Federal Register** Notice, the Agency removed dioxane from its list of pesticide product inert ingredients that are currently used in pesticide products.

iii. There are two tolerance exemptions for methylene chloride (dichloromethane) for use as a solvent currently in 40 CFR 180.1001(d) and (e). The exemption in 40 CFR 180.1001(d) is for a use as a solvent and co-solvent. The use in 40 CFR180.1001(e) is as a dispersing and wetting agent.

iv. In 40 CFR 180.1014 there is an exemption from the requirement of a tolerance for pentane when used in accordance with good commercial practice as an adjuvant in liquid grain fumigants for the fumigation of the following grains; barley, corn, oats, popcorn, rice, rye, sorghum (milo), wheat.

v. There are two exemptions from the requirement of a tolerance for dimethylformamide. In 40 CFR 180.1001(d), the exemption is for use as a solvent and cosolvent with its use limited to preemergence application prior to formation of edible parts of food plants, and seed and transplant treatment, and also as part of the U.S. Department of Agriculture witchweed quarantine program, postemergent application in field corn, after silking and tasseling of the corn. The second exemption from the requirement of a tolerance exists in 40 CFR 180.1046 for dimethylformamide for the following two uses:

a. When used in accordance with good agricultural practices in formulations with the fungicide triforine (N,N-[1,4-piperazinediylbis(2,2,2,-trichloroethylidene)] bis [formamide]) if such formulations contain not more than 30 percent dimethylformamide in or on the following raw agricultural commodities: almonds, apples, apricots, bell peppers, blueberries, cantaloupes, cherries, cranberries, cucumbers, eggplants, hops, nectarines, peaches, plums, prunes (fresh), strawberries, and watermelons.

b. When used by the U.S. Department of Interior, Fish and Wildlife Service as a solvent for the lamprecide sodium salt of alpha, alpha, alpha-trifluoro-4-nitro-meta-cresol or 4-nitro-3-(trifluoromethyl) phenol in the Great Lakes.

C. What is the Contribution to Tolerance Reassessment?

Section 408(q) of FFDCA, as amended by FQPA requires EPA to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. This direct final rule revokes 10 tolerance exemptions. Therefore, if there are no adverse comments, 120 days after publication of the direct final rule, 10 tolerance reassessments will be counted toward the August 2002 deadline.

IV. Regulatory Assessment Requirements

EPA is removing 10 tolerance exemptions that are no longer necessary. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This direct final rule directly regulates food processors, food handlers, and food retailers, but does not affect States, local or Tribal governments directly. 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). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it 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 special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

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).

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that these revocations will not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. These chemical substances are no longer used in pesticide products applied to food and feed commodities. These

exemptions from the requirement for a tolerance are no longer necessary.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: March 28, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

§ 180.1001 [Amended]

2. In § 180.1001 by:

i. Removing from the table in paragraph (d) the entries for ''benzene'', ''coal (derived only from anthracite and bituminous coals)'', ''coke (from anthracite and bituminous coals only and petroleum)'', ''dimethylformamide'', ''dioxane'', ''formaldehyde'', and ''methylene chloride (dichloromethane)''.

ii. Removing from the table in paragraph (e) the entry for ''methylene chloride''.

§ 180.1014 [Removed]

3. By removing § 180.1014.

§ 180.1046 [Removed]

4. By removing § 180.1046

[FR Doc. 02 –8154 Filed 4–3–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7781]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits

flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II:				
New York: Port Jervis, City of, Orange County.	360976	December 26, 1973 Emerg.; June 1, 1978, Reg. April 2, 2002	4/2/02	4/2/02
Region III:				
Pennsylvania: Langhorne, Borough of, Bucks County.	421074	January 24, 1975, Emerg.; July 2, 1980, Reg. April 2, 2002	-do-	-do-
Region I:				
Connecticut: Chesire, Town of, New Haven County.	090074	March 13, 1975, Emerg.; July 16, 1981, Reg. April 15, 2002	4/15/02	4/15/02
Southington, Town of, Hartford County.	090037	July 3, 1975, Emerg.; July 16, 1981, Reg. April 15, 2002	-do-	-do-
Region II:				
New Jersey: Madison, Borough of, Morris County.	340347	December 3, 1971, Emerg.; July 16, 1979, Reg. April 15, 2002	-do-	-do-
New York: Kiryas Joel, Village of, Orange County.	361610	August 31, 1994, Emerg.; April 15, 2002	-do-	-do-
Region IV				
Florida: South Daytona, City of, Volusia County.	120314	June 18, 1971, Emerg.; October 3, 1976, Reg. April 15, 2002	-do-	-do-
Tennessee: Selmer, City of McNairy County.	470132	February 14, 1975, Emerg.; June 4, 1987, Reg. April 15, 2002	-do-	-do-
Region VI:				
Texas: Jonestown, City of, Travis County.	481597	January 29, 1976, Emerg.; April 1, 1982, Reg. April 15, 2002	-do-	-do-
Lago Vista, City of, Travis County.	481588	January 29, 1976, Emerg.; April 1, 1982, Reg. April 15, 2002	-do-	-do-
Lakeway, City of, Travis County.	481303	June 27, 1977, Emerg.; November 5, 1980, Reg. April 15, 2002	-do-	-do-
Travis County, Unincorporated Areas.	481026	January 29, 1976, Emerg.; April 1, 1982, Reg. April 15, 2002	-do-	-do-
Region X:				
Idaho: Oregon: Warm Springs Indian Reservation.	410291	August 11, 1997, Emerg.; April 15, 2002	-do-	-do-

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 25, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance Administration and Mitigation Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA 2000–8545, Notice No. 3]

RIN 2130–AA89

Locomotive Cab Sanitation Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA amends its regulations by adding standards that address toilet and washing facilities for employees who work in locomotive cabs. This rule provides exceptions for certain existing equipment and operations, and establishes servicing requirements.

DATES: This final rule will become effective on June 3, 2002.

ADDRESSES: Any petition for reconsideration should reference FRA Docket No. FRA 2000–8545, Notice No. 3, and be submitted to the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material related to this proceeding will be available for inspection at this address and on the Internet at *http://dms.dot.gov*. Docket hours at Nassif are Monday–Friday, 10 a.m. to 5 p.m., except on federal holidays.

FOR FURTHER INFORMATION CONTACT: Lou Klein, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590, (telephone: 202–493–6235); or Christine Beyer, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590, (telephone: 202–493–6027).

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, Congress enacted Section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102–365, September 3, 1992, codified at 49 U.S.C. 20103, note) in response to concerns raised by employee organizations, congressional members, and recommendations of the National Transportation Safety Board concerning working conditions in locomotive cabs. In this legislation, Congress issued mandates concerning locomotive crashworthiness and cab working conditions. Section 10 of RSERA, entitled Locomotive Crashworthiness and Working Conditions, required FRA ''to consider prescribing regulations to improve the safety and working conditions of locomotive cabs' throughout the railroad industry. In order to determine whether regulations would be necessary, Congress asked FRA to

> assess the extent to which environmental, sanitary and other working conditions in locomotive cabs affect productivity, health and the safe operation of locomotives.

In response to Section 10 of RSERA, FRA studied a variety of working conditions in locomotive cabs, including sanitation, noise, temperature, air quality, ergonomics, and vibration. In September 1996, FRA submitted its Locomotive Crashworthiness and Cab Working Conditions Report (''Report'') to Congress, which describes the results of these studies. The Report is available for review in the docket of this matter and was discussed in detail in FRA's Notice of Proposed Rulemaking (NPRM) on Locomotive Cab Sanitation Standards. See, 66 FR 136, January 2, 2001.

In short, FRA surveyed in excess of 200 locomotives to assess cab sanitation facilities. FRA found a wide range of conditions, which varied due to weather, type of sanitation system in place, carrier maintenance and service programs, locomotive model, and economic status of the railroad. In addition, some locomotives were not equipped with sanitation facilities. FRA found dirty floors and toilet seats, missing toilet seats, poor ventilation, offensive odors, and lack of toilet paper. In very cold weather, some units tend to freeze and become inoperable. Of the cabs surveyed, approximately thirty percent were deficient in some manner related to the use of sanitation facilities.

The Report noted that employees and rail management play a role in the condition of sanitary facilities; poor sanitary conditions aboard locomotives are caused by inadequate maintenance and/or heavy use or misuse by operating crews. Nearly all railroads had programs in place to service toilet and washing units, although the program requirements vary from property to property depending on degree of use, toilet system in place, and weather conditions. In addition, FRA found that adherence to the servicing programs was uneven throughout the industry, and that poor servicing was often the primary cause of unsanitary facilities.

The Report also explained that there was disparity in the legal treatment of locomotive cab sanitation among state and federal regulatory and enforcement bodies and confusion existed among industry members concerning applicable standards and guidelines. See NPRM, 66 FR 136–7.

The Report concluded that, given the significant role that servicing and use play in maintaining a sanitary workplace and the relative ease with which servicing and use may be modified, the issue of locomotive sanitation could best be resolved through rail management and labor cooperation.

Following publication of the Report, FRA continued to receive employee complaints about the state of sanitation in locomotive cabs, and the health and safety risks associated with working in an unsanitary area. FRA also received complaints from employees of one railroad concerning the disposal method used in a particular sanitation system. By design, this system requires temporary storage of untreated waste in sealed waste containers, which gave rise to perceived health and safety concerns. There were also concerns about the expansion of this system as the railroad's territory increased, the increase of ''power sharing'' arrangements among the carriers, and the administrative difficulties that would arise in maintaining and mixing different systems. Finally, some State agencies expressed frustration with FRA concerning federal preemption of certain state sanitation regulations, and the uneven treatment given locomotive sanitation by the state and federal courts.

In light of these concerns, FRA determined that cab sanitation must be revisited and addressed so that cab employees would have access to adequate sanitary facilities, and to ensure uniform application of the law. Despite the considerable acrimony that had developed in the industry surrounding this issue, FRA remained convinced that it should be addressed cooperatively, with the assistance of the stakeholders who possess the knowledge and expertise to resolve the problem effectively. Therefore, on June 24, 1997, FRA presented the subject of locomotive cab working conditions, including sanitation, to the Railroad Safety Advisory Committee (RSAC).

RSAC was formed by FRA in March 1996 to provide a forum for consensual

rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA may, as necessary, move ahead to resolve the issue through traditional rulemaking proceedings.

When FRA presented the subject of locomotive cab working conditions to RSAC, the agency stated the purpose of the task as follows: to safeguard the health of locomotive crews and to promote the safe operation of trains. RSAC accepted this task, formed a Locomotive Cab Working Conditions Working Group (''Working Group''), and designated this assignment Task No. 97–2. As to sanitation, RSAC asked the Working Group to

> research comparable workplace requirements in an effort to develop minimum acceptable regulations, guidelines, or standards as appropriate for the locomotive cab environment.

The Working Group consists of representatives of the following organizations, in addition to FRA:

American Association of State Highway & Transportation Officials
American Public Transportation Association
American Short Line and Regional Railroad Association
Association of American Railroads
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes (Nonvoting Member)
International Brotherhood of Electrical Workers
National Railroad Passenger Corporation (Amtrak)
Railway Progress Institute
Sheet Metal Workers' International Association
Transport Workers Union of America
United Transportation Union.

The Working Group's goal was to produce recommendations for locomotive cab sanitation standards warranted by an assessment of the available information, including the FRA survey of sanitary facilities and complaint information. The Working Group met several times for over a period of nearly two years to discuss locomotive cab sanitation in the railroad industry. The discussions covered all aspects of sanitation facilities in the locomotive cab, including toilet systems, washing facilities, potable water, ventilation, lighting, trash disposal, provisions for toilet paper and bottled water, servicing, and unique operations or characteristics that might require specialized regulatory treatment.

The Working Group reached consensus on a series of recommendations for a proposed sanitation standard, referred them to the full RSAC, and RSAC approved them on December 7, 2000. On January 2, 2001, FRA published the NPRM, which incorporated many of the Working Group's recommendations. FRA held a public hearing on April 2, 2001, to gather comments from interested parties, and then reconvened the Working Group on August 22, 2001. The Working Group considered all comments received, and again reached consensus on recommendations for a final standard. These recommendations were presented to the full RSAC and on December 10, 2001, RSAC voted by simple majority to forward the recommendations to FRA as the basis for a final sanitation standard.

The discussion that follows outlines the nature of each comment, the Working Group's recommendation for addressing the comment, and how FRA resolves the comment in this final rule.

II. Summary of Comments and Conclusions Reached

FRA received comments to the cab sanitation NPRM from approximately 13 organizations and individuals, and these are available to the public for review in DOT's electronic docket (*http://dms.dot.gov*). Some of the commenters expressed appreciation that the subject of locomotive sanitation would now be addressed by a federal standard, many expressed broad support for the basic principles and approach taken in the NPRM, and some of the commenters raised issues they believe are not addressed appropriately in the proposed standard. Some of these are not difficult to cure, and some will require additional investigation.

The American Public Transportation Association (APTA) has been a member of the Working Group, participated in developing recommendations for the NPRM, and is generally supportive of the proposed standard. However, when its member organizations reviewed the NPRM, they identified an issue concerning commuter work trains that is not addressed in the NPRM. Commuter railroads and their contractors use work trains to maintain the right-of-way along their routes, and typically use older locomotives that are not equipped with sanitary facilities to power these work trains. The operation of these trains is very similar to switching, transfer, and some Class III service, in which employees are not captive in the cab for an entire work shift, and have access to toilet facilities along the right-of-way. APTA states in its comments that all of the commuter railroads that own and maintain their rights-of-way provide alternate access to sanitation facilities if the locomotives are not equipped with toilets. There are a variety of methods used to accomplish access: portable toilets are placed at the work site; cabooses with toilet facilities are attached to the work train; crews are provided with keys to passenger station facilities; portable toilets are placed on flat cars and attached to the work train; a passenger coach equipped with facilities is attached to the work train; and highway vehicles are provided to shuttle employees to the nearest facility.

The basis for the exceptions provided in the NPRM for switching, transfer service and Class III service is that employees must be given adequate access to sanitation facilities, even though the locomotive on which they work is not equipped with a toilet. Retrofitting locomotive cabs with new toilet facilities is extremely costly and labor-intensive. Therefore, the Working Group recommended that FRA provide an exception in the final rule to address commuter work trains in which the locomotives are not equipped with toilet facilities, so long as the employees are given appropriate access to facilities. FRA agrees that such an exception is appropriate.

APTA also requested a new definition for the final rule to properly identify the trains covered by this exception: a non-revenue service train used in the administration and upkeep of the railroad. The proposed definition is very similar to one published in the revised power brake rule (*See*, 49 CFR 232.407(a)(4)), except that it does not include a reference to the train's tonnage. The issue of tonnage has no bearing on access to sanitation facilities, and therefore, FRA concurs that there is no reason to include this in the new definition. However, FRA believes the definition should be clarified to indicate that only *commuter* work trains are covered by the exception. The Working Group and FRA did not contemplate

such an exception for freight railroads, whose facilities are often much more dispersed geographically; and therefore, the definition and exception as they appear in the final rule apply only to commuter work trains. Section 137(b)(1)(i) of the final rule now includes commuter work trains in the exception that previously applied only to commuter service.

The National Railroad Passenger Corporation (Amtrak) participated in the Working Group meetings and submitted comments to the docket following publication of the NPRM. Amtrak initially raised three issues in need of attention, but subsequently notified FRA that its concerns regarding two of the issues were no longer significant. However, Amtrak noted that the definition for ''switching service'' in the NPRM did not include passenger operations, as it traditionally has in other regulations and in practice. FRA and the Working Group agreed that the NPRM was in error, and the definition of ''switching service'' now includes passenger, as well as, freight operations.

In the course of the Working Group discussions in August 2001, Amtrak raised concerns about cab cars used in push-pull in which the lead unit may not be equipped with toilet facilities in a few areas of the country. This practice is restricted to very few cars and the employees working on these trains have access to facilities in the passenger coaches of the train. In addition, cars that do not possess toilets are decreasing in the Amtrak system, and will not be replaced with unequipped units. The traditional Amtrak locomotives and cab cars are equipped with compliant toilet facilities for the cab crew. Amtrak requested and the Working Group recommended that FRA insert a narrow exception in the rule text to permit Amtrak to run these cab cars so long as employees have adequate access to sanitation facilities in the passenger coaches of the train or at passenger stations along the route. FRA agrees that, given the limited circumstances in which these cars are used in the lead position and that the employees have access to facilities elsewhere, a narrow exception is appropriate. Therefore, FRA adds a new exception in this final rule, in § 229.137(b)(1)(vi).

The Association of Railway Museums (ARM) is a member of the full RSAC Committee, representing tourist, scenic, historic and excursion railroads. ARM commented on the NPRM and supports the approach it takes, particularly with respect to tourist railroads. However, ARM notes that some of its members do not operate on the general system of railroad transportation and suggests that FRA should clarify in this document that this sanitation standard does not apply to non-general system railroads.

This sanitation standard will become part of the locomotive safety standards, 49 CFR part 229. Section 229.3 states that the locomotive standards do not apply to ''a railroad that operates only on track inside an installation which is not a part of the general system of transportation * * *'' As used here, the phrase ''on track inside an installation'' includes entities such as tourist, scenic, historic and excursion railroads. Therefore, if these railroads operate only within installations that are not part of the general system of transportation, they are not covered by part 229 and will not be covered by the sanitation standard. This is true regardless of whether the railroad is insular or not; insularity is not an issue in part 229. (See, e.g., 49 CFR 234.3(c).)

The Tourist Railroad Association (TRAIN) is a member of the full RSAC Committee and represents approximately 300 tourist railroads and railroad museums. TRAIN submitted comments to the NPRM which suggest one minor change to the rule text. TRAIN states that their members may not be ''carriers'' pursuant to certain federal law, and therefore that term should be removed from the exception that relates to tourist railroads, § 229.137(b)(1)(v). As used here, of course, ''carrier'' has the meaning conveyed by the railroad safety laws (*See,* 49 U.S.C. 20102) which clearly cover tourist operations. Nevertheless, to avoid any implication with regard to other statutes, FRA has omitted the word ''carrier'' from the rule. The rule text now states that employees must have access to ''railroad-provided sanitation facilities,'' rather than ''railroad carrier-provided facilities'' as stated in the NPRM.

Two individual locomotive engineers submitted comments to the NPRM. Mr. P.R. Wilcox, Local Chairman of the Brotherhood of Locomotive Engineers Division 848, wrote to underscore the unsanitary conditions that are present on many locomotives and to encourage FRA and the Working Group to complete the task with a final standard. Mr. E.M. Hendricks, an engineer in Tucson, Arizona, also stated that the conditions are at times egregious and that a federal regulation is necessary to correct these problems. Mr. Hendricks believes that lack of proper servicing is typically the problem and that sanitation facilities should be added to the locomotive daily inspection so that employees in the lead locomotive begin their shift with sanitary facilities. FRA and the Working Group concur with these commenters and the final standard addresses their concerns.

The Legislative Board of Arizona of the Brotherhood of Locomotive Engineers (BLE) submitted a comment concerning the juxtaposition of difficult working conditions resulting from poor sanitation facilities and the difficult working conditions that result when cabs in the Southwest are not air conditioned. The Arizona BLE states that most engineers would prefer to work in an air conditioned unit during the summer months, so long as the consist includes one locomotive with operating, sanitary facilities. If given a choice, engineers would most often work in an air conditioned locomotive without a proper sanitation facility, so long as one locomotive in the consist possessed appropriate facilities. The Arizona BLE suggests that the crew should have the discretion to determine if a noncompliant, air conditioned unit would be taken out of the lead position in favor of a non-air conditioned unit that possesses a compliant sanitation facility.

The Working Group and FRA grappled with this issue in discussions prior to and following publication of the NPRM. The choice would be a difficult one to make and cannot be resolved in the context of this rulemaking procedure. FRA cannot issue a final sanitation standard that includes requirements concerning air conditioning, because it would exceed the scope of this rulemaking as established in the NPRM. Even assuming FRA could address air conditioning in this final rule, a very complicated list of considerations would have to be reviewed in order to determine which locomotive should be placed in the lead position. A highly subjective hierarchy of ''palatable'' working conditions would have to be devised; the age, condition and power of each locomotive would have to be assessed in relation to the load carried; power sharing arrangements between the major carriers would have to be examined to prevent interruptions in service; and weather conditions and geography would have to be anticipated. This sort of ''consist management'' requirement, though desirable, is extremely difficult to contrive on a national basis given the enormity of variation among railroads, operations, regions, and personal preferences across the industry. FRA will continue to seek methods to minimize safety and health hazards for cab employees with the assistance of the Working Group, but the issue of cab temperature cannot be addressed in this final standard.

The United Transportation Union (UTU) participated in all of the Working Group discussions and made a statement at the public hearing. The UTU stated that the Working Group worked hard to reach appropriate solutions for existing problems concerning sanitation and the the NPRM, if adopted as a final rule, would improve the level of safety in the industry. The UTU encouraged FRA to move forward with a final standard.

The Association of American Railroads (AAR) participated in the Working Group discussions, submitted comments to the NPRM, and took part in the public hearing. The AAR's comments respond to requests for input that FRA issued in the NPRM. First, FRA invited comment on the policy of permitting locomotives with defective toilets to be used as trailing units in a train or in other limited circumstances. The AAR supports this proposal, stating that the condition of toilets in trailing units is not relevant so long as the lead, occupied unit possesses a compliant unit.

FRA asked whether two types of sanitation systems currently in use, the dry hopper and the bogan, which must be phased out pursuant to the new rule, are used pervasively throughout the industry. The AAR states that these systems are isolated to the two carriers the Working Group and FRA were aware of when preparing the NPRM. FRA was concerned that the temporary exception proposed in the NPRM for continued use of these systems, although they do not comply with the new definition of ''toilet facility,'' would be more widespread than anticipated when the exception was proposed. As is explained in greater detail below, each of these systems is being phased out over time and replaced with compliant toilets.

FRA also asked for assistance in clarifying § 229.137(c), which permits use of a lead unit with a defective toilet when several conditions exist that make it impossible to move the train without use of that locomotive. FRA thought that the language of the exception might be refined to appear less complicated. The AAR notes that the carriers will rely on this section rarely, but that the need for the exception is inevitable on occasion. The AAR concurs that the proposal accurately captures all conditions that must be present in order to take advantage of the exception and that shortening or refining the language in § 229.137(c) is not possible.

FRA also asked for comment on how § 229.137(c) would affect push-pull operations. The AAR states that push-pull service is used only in commuter service, not in freight railroading. The proposal and the final rule provide an exception for commuter service so that § 229.137(c) will never come into play where push-pull service is used.

FRA stated in the NPRM that it would consider reducing the 10-day period during which a railroad can use a defective toilet in switching or transfer service to reflect common practice (§ 229.139(d)). The AAR argues in its comments that shortening this 10-day period would not provide the railroads with sufficient time to repair defective units, and as written in the NPRM, would provide no health benefit because employees must be given access to facilities during the 10-day period. Based on this information, the fact that the Working Group consented to this time period, and an absence of evidence that the 10-day period is excessive or harmful, FRA has retained this provision in § 229.139(d) of the final rule.

Finally, the AAR responded to FRA's request for information on the Microphor toilet system. This system has been used pervasively throughout the industry for at least twenty years, and several questions concerning its maintenance and operation surfaced during the Working Group discussions and in comments to the NPRM. The Microphor is a biological treatment system in which waste is flushed into a chamber where biological agents reduce the waste to harmless by-product. Then the by-product is chemically treated to neutralize the biological agent, and the solution is slowly released into the atmosphere. When working properly, the effluent is clear liquid, or liquid with small amounts of inert material dissolved or suspended in it. The U.S. Food and Drug Administration (FDA) has statutory authority to regulate the disposal of human waste in interstate transportation, and has issued standards that prohibit disposing untreated waste and permit discharging waste that has been treated to prevent disease. *See* 21 CFR part 1250. In 1973, the FDA examined the Microphor system pursuant to its authority and determined that it meets the standard if operating as intended.

The AAR stated in its comments and at the public hearing that more than one thousand Microphor systems are in use in the industry today. The AAR is not aware of any injury or illness caused by the use of the Microphor system. In addition, the AAR states that the Microphor flushes and processes waste without exposing employees to contact with the waste or chemicals. The system works on water, air pressure, and chlorine; no electricity is needed. Finally, the AAR notes that the system has been improved over time. The AAR believes that the chemical configuration and delivery methods used to process waste have been improved for efficiency and safety in handling. Also, more efficient flushing designs have been developed to lower water and chlorine consumption and increase capacity.

FRA asked commenters to consider the need for explicit servicing requirements for the Microphor, which might include following the manufacturer's recommended maintenance plan or periodically testing the effluent to determine whether the treatment process is working properly. In its written comments, the AAR stated that these changes are not necessary because the carriers follow specific maintenance programs that suit local conditions and the system has not resulted in any known injuries or illnesses.

Following the Working Group meeting in August 2001, the AAR reconsidered its view that testing the discharge was not necessary. Based on persistent complaints from labor organizations that the Microphor often discharged untreated waste along the right-of-way, the railroads agreed to conduct testing under a variety of operational conditions. The initial testing indicated that some units perform as intended, but some apparently do not. According to the AAR, the testing results revealed inconsistencies in the operation of the Microphor system, which may be due to design changes, maintenance, usage, or other factors. In September 2001, the AAR notified FRA that certain freight and passenger carriers and the manufacturer developed a test plan to validate the effectiveness of the Microphor system. The test plan would begin in the fall of 2001 and continue for approximately three months. Under the test plan, the carriers would gather usage patterns and operating conditions, such as weather, across the industry, and then subject a large number of the toilets to these ''real world'' conditions. The AAR will consult with FRA when the test results have been gathered.

The Brotherhood of Maintenance-of-Way Employes (BMWE) and the Brotherhood of Railroad Signalmen (BRS) submitted written comments and participated in the public hearing of this matter. Both organizations are members of the full RSAC, and the BMWE is a non-voting member of the Working Group. These organizations represent railroad employees who work along the railroad right-of-way and are directly impacted by discharge from the Microphor system.

The BRS and the BMWE assert that the discharge is often untreated or poorly treated waste, which exposes employees to the risk of illness or, at the very least, a highly unpleasant work environment. The organizations state that waste treatment in the Microphor is time-dependent, and suggest that waste is not always in contact with the chlorine for a sufficient length of time. This problem may arise when very frequent flushing occurs, when the chlorine concentration has diminished substantially, when the flushing mechanism lacks sufficient water, or when the bowl is clogged. In addition, the BRS and BMWE state that the manufacturer's design changes over the last twenty years have reduced the efficiency of the treatment process.

Both organizations urge the FRA to prohibit any discharge from the Microphor system along the right-of-way until more information has been gathered to determine the nature of the discharge. If FRA chooses not to prohibit discharge (as is the case in the final rule), they urge FRA to require the railroads to engage in an active testing program to ensure that the system and maintenance plan are working properly. The BRS also suggested that the railroads install holding tanks beneath the Microphor that would hold any discharge until the locomotive is at a location where the waste can be emptied into a larger container or treatment process. The BRS and BMWE representatives on the full RSAC Committee did not concur with the Working Group's recommendation to the full RSAC that FRA publish a final rule substantially consistent with the NPRM. Instead, these organizations voted to send the work product back to the Working Group for further analysis.

FRA agrees with the BRS and BMWE that this issue is serious and in need of investigation and analysis. However, FRA has determined that the final rule should not include a strict prohibition on discharge from the Microphor. The subject matter of this rulemaking is sanitary conditions in the locomotive. FRA does not have primary responsibility over discharges from interstate conveyances, and even if it becomes necessary for FRA to regulate in this area to protect employee health, there is no reason to delay the present final rule in order to address the issue of discharges. Further, given the number of units currently in use throughout the country, the adverse impact of such a prohibition would be enormous. Most likely, there would be a substantial increase in the number of unsanitary toilet compartments, clogged commodes, and unhealthy conditions for cab employees, who are often required to be present in the cab for 8 or more hours. If the railroads took all of these locomotives out of service, the industry and the economy it generates could not function.

However, FRA has added language to the rule text in § 229.139 to more fully describe the conditions that must be present in order for the toilet to be ''operating as intended.'' FRA and the Working Group believe that this change from the NPRM will help to resolve some of the issues surrounding the Microphor and the composition of its discharge.

FRA has been testing the Microphor system and its discharge at selected locations during the last several months, and plans to do additional testing. Thus far, FRA has not collected enough data on which to draw reliable conclusions concerning the system and its ability to treat human waste prior to discharge. When FRA has completed the testing, FRA will consult with the industry concerning any questions or conclusions reached, and to compare results with the tests completed by the AAR member organizations. Further, FRA will consult with the FDA to determine what actions that agency deems appropriate under its current rules or through further rulemaking. At that point, FRA will be in a better position to determine whether the FRA sanitation standard should address the characteristics of the effluent.

The Working Group was asked to address sanitation facilities for locomotive cab employees and worked tirelessly for three years to develop workable solutions that cab employees and rail management can support. FRA believes it is very important to publish the standard now to correct ongoing problems that affect cab employees, to hasten the retirement of older systems, and to remedy the uneven state and federal treatment of this issue in the state legislatures and the courts.

III. Section-by-Section Analysis

It is important to note that FRA's final rule text set forth below differs in some respects from the other federal and state sanitation standards because of the unique characteristics of the railroad operating environment. The working environment for railroad cab employees is quite different than the typical American worker. Existing locomotive toilet systems and corresponding maintenance needs are not uniform throughout the industry. Employees may work on a different locomotive and a variety of routes each day of the week. Employee assignments and actual time spent in the cab may vary significantly during a typical week, and toilet systems might vary significantly on each of these occasions. The time it takes to complete a particular route might vary greatly from day-to-day, due to traffic, load, and weather conditions. Small operators typically possess older equipment, and some units may not be equipped with toilet facilities at all. On these properties, employees may generally have access to adequate sanitation facilities along the right-of-way, but there may be occasions when that is difficult to achieve.

As FRA discussed in the NPRM, there are significant economic and operational barriers to requiring a ''one-size-fits-all'' sanitation standard, given all of these factors, and consequently FRA has made every effort in this proceeding to be flexible. The basic requirement set forth in the rule is that each cab employee should have access to clean, operable toilet facilities, as the need arises for each individual. There may be instances where that basic principle is frustrated, but FRA believes the rule minimizes that likelihood to the fullest extent possible.

Definitions

The final rule provides definitions for key terms used in this amendment, and these will be placed in § 229.5 with the other definitions established for part 229. The definitions are set forth alphabetically.

For the terms ''commuter service'', ''other short-haul passenger service'', ''switching service'', and ''transfer service'', please see the detailed discussion of the exceptions to the general requirements, discussed in conjunction with § 229.137(b) below. FRA has defined the term ''commuter service'' to track the agency's definition in 49 CFR part 209, Appendix A. FRA has added a definition of ''other short-haul passenger service'' to track the definition put forth in Appendix A, as well. This term was used in the NPRM within the exception for commuter service, and had not been previously defined in part 229.

FRA added a definition for the term ''commuter work train'', in response to comments received from APTA. FRA agrees that a definition should be provided and uses the definition that has been used for work trains on freight railroads, without any restriction on tonnage. The definition of work train developed for freight railroads involves power brake application, and so tonnage in the work train is extremely important. In this rule, tonnage has nothing to do with sanitation facilities on commuter lines, and so FRA did not include any restriction on tonnage.

The definition of the term ''modesty lock'' relates to a rudimentary lock that would be required on the door of the sanitation compartment. The modesty lock is a lock or latch that is operated by the occupant of the sanitation compartment to provide privacy while in use. The rule does not require the modesty lock to be designed to prevent deliberate forced entry. For example, some locks could be designed to provide emergency access, to accommodate carrier concerns that access may be required in the event of an accident or health problem. Such access could be gained, for example, by using a coin to turn a slotted pin or using a pencil inserted into a hole to slide a latch. Such simple measures would prevent inadvertent intrusion, thereby maintaining privacy while allowing prompt emergency access. Most locomotives are now equipped with a modesty lock that meets the definition, and these existing locks vary from property to property. In addition, there are a variety of products available on the market that would meet the requirements of this definition, which vary in price, sophistication, and size. For example, a very simple surface-applied slide latch may be employed to meet the requirements of the definition. At this time, FRA sees no need to prescribe more specific requirements for the modesty lock, so that each railroad may choose the best device among the variety of products available to suit their equipment and cost needs, and so that existing locks which serve the intended purpose of privacy may remain in place.

The definition of ''potable water'' references the requirements of the U.S. Environmental Protection Agency drinking water standards, which are widely recognized as the pertinent reference standards. This definition also states that commercially available bottled water is deemed to be potable water for purposes of the sanitation standards. So long as employees have potable water available in adequate supply for drinking and washing purposes that is bottled and a recognized commercial product, the running water that might be present in the sanitation facility on some locomotives does not have to strictly meet the EPA drinking water guidelines. On many older locomotives in use, tanks of water are present, and may have been used at one time for drinking and washing purposes. Nothing in the rule requires removing these water tanks. However, with the advent of bottled water, and the knowledge that it is sometimes difficult to maintain ''potable'' water in the large, on-board tanks, carriers typically now provide packs of bottled water to cab employees. Also, on many of the newer locomotives, there is no large water holding tank for employee use, and carriers with these units also utilize the convenience and safety aspects of commercially available bottled water. FRA sees no adverse consequences associated with this usage, and believes it may decrease the risk of illness to cab employees.

The final rule includes definitions for the terms ''sanitary'' and ''unsanitary,'' which involve the absence or presence of filth, trash, and waste that cause a reasonable person to believe that the condition might constitute a health hazard; and persistent odor sufficient to deter normal use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. FRA believes that providing these definitions adds clarity to this issue and ultimately helps the industry comply with the standard. These terms when used in ordinary discussion are somewhat subjective, and might produce different inferences among different people. Therefore, FRA's definition incorporates the perceptions of a reasonable person, or the average reaction to sanitation facilities, and includes specific examples that would constitute unsanitary conditions. Sanitary conditions are thus defined as the absence of those conditions. The list provided in the definition is illustrative, not exhaustive, and serves as guidance to the industry of what FRA will consider compliant. Undoubtedly, FRA inspectors and the industry will have to utilize on-the-spot judgments in order to distinguish conditions that are acceptable from those that are not. These definitions are inserted to guide those local decisions in an area that can be very subjective. The Working Group and FRA generally accept that immaculate conditions cannot be expected, any more than one would expect such conditions in a public rest room in an airport or office building. However, sanitation compartments are expected to be clean and orderly following periodic servicing and cleaning. Since the duty to remedy an unsanitary condition arises only at the daily inspection, it is particularly appropriate to specify a standard that describes conditions most people would find unacceptable.

As stated in the NPRM, the Working Group discussed what perception the ''reasonable person'' must have before a condition is deemed unacceptable. For instance, what amount of filth, trash, or human waste is considered significant by the reasonable person? FRA's approach to this is governed by the need to encourage use of sanitary facilities on a regular basis as a matter of good health. Even if a condition is objectively harmless (as determined by later laboratory analysis), the fact that it gives the appearance of possible unhealthfulness could discourage use of the facility and contribute to degraded health.

To limit disruption of service because of conditions over which the carrier has limited control, the railroads suggested that certain conditions be treated as unsanitary only if ''caused by mechanical or maintenance failure in the compartment.'' This language would present enforcement difficulties for FRA in determining whether a mechanical or maintenance failure has occurred. This raises issues that could legitimately bear on the exercise of FRA enforcement discretion, yet FRA believes such issues shouldn't serve as a defense to failure to address unsanitary conditions at the daily inspection. No railroad employee should have to contend with unsanitary conditions left behind by a trespasser or prior employee user of the facility.

With the exception of branch lines discussed below, as of the daily inspection, railroads should be prepared to clean a sanitation compartment and service a toilet facility or to place the unit in a trailing position if the sanitation compartment is no longer sanitary or operative.

The final rule defines ''sanitation compartment'' as an enclosed compartment on a locomotive that contains a toilet for employee use. Depending on the type of locomotive, these compartments may be located in the nose of the unit or at the back of the cab behind the engineer's seat. Further discussions below explain in detail what each sanitation compartment must contain.

FRA defines ''toilet facility'' as a system that automatically or on command of the user removes waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors. FRA developed this definition with the assistance of the Working Group. There are a variety of toilets available for use on locomotives, and FRA did not wish to exclude the use of any of the systems that effectively meet human sanitation needs. Therefore, this definition attempts to establish performance criteria that all of the adequate facilities meet when operating as intended.

To clarify FRA's intent concerning some of the terms in the definition, ''automatically * * * removing the waste'' does not mean that waste is removed by gravity. Rather, this language is meant to cover systems that possess sensors that flush when the occupant leaves the toilet area. It is FRA's understanding that some toilets that may be used on locomotives utilize this feature, and FRA believes it is an effective method. However, FRA does not intend that systems without a device to separate the waste tank from the user (such as a deflector), which simply permit waste to flow to holding tanks below the toilet bowl and remain there until emptied, meet this definition. These systems are prone to overfilling and noxious odors, and may go uncleaned for some time because the cleaning or emptying process is very unpleasant and hence doesn't get accomplished. The term ''on command of the user'' means that a flush mechanism is present and functions as intended.

The definition for toilet facility also includes the terms ''harmful'' and ''offensive,'' which may give rise to differing subjective interpretations. FRA and the Working Group discussed these words and ultimately determined that a certain amount of subjectivity is inevitable when personal preferences for cleanliness are involved. Individuals may differ as to what seems ''offensive'' or even ''harmful.'' FRA intends that the toilet system must effectively remove or treat waste so that odors generated in the toilet area do not linger and penetrate the cab working environment. FRA will use its reasonable judgment in determining whether odors rise to the level of offensiveness or harmfulness.

The final rule defines ''washing system'' as a system for use by employees to maintain personal cleanliness. As defined here, the facility may include a secured sink, water, antibacterial soap and paper towels; or antibacterial waterless soap; or antibacterial moist towelettes and paper towels; or any combination of antibacterial cleansing agents. It is critical that all employees have available to them a system in which they are able to clean and sanitize their hands after using the toilet. There are a variety of antibacterial agents available on the market that effectively sanitize and disinfect after toilet use. In addition, there are many locomotive units that do not possess sinks and running water for employees to use as washing facilities. As a result of discussions with the Working Group, FRA understands that most cab crews receive a package of items for use on each trip, and this ''crew pack'' typically includes the sort of washing system that is permitted by this definition. Therefore, so long as employees are provided with one of the options included in the definition, or others that may be developed in the future that provide an equivalent level of sanitation, this portion of the sanitation requirement has been met.

Members of the Working Group expressed concern about restrictions on the placement of ''crew packs.'' Some items in these packages are used by employees while in the sanitation compartment, but these packages also include items that employees use while working or eating in the cab, such as paper towels. In addition, crew packs are available for pick up by locomotive crews at on-duty points throughout the railroad network, and employees often grab several of them to keep in the cab. It is likely that some of these packs won't be placed in the sanitation compartment when brought on board, and will be placed, as a convenience, near the employee cab stand for use throughout the work shift. For these reasons, FRA sees no reason to require by regulation that crew packs remain at all times in the sanitation compartment and so, the rule does not restrict the placement or contents of crew packs issued by the railroad.

The only comment FRA received concerning the definitions involves the term ''commuter work train'' as discussed above. Therefore, FRA did not make changes to the definitions set forth in the NPRM, with the exception of adding ''commuter work train.'' FRA added this term to the definitions, in order to incorporate these trains in the exception for ''commuter service'' as discussed above. In addition, FRA changed the definition ''transfer train'' which was used in the NPRM, to ''transfer service'' here in the final rule, in order to avoid any confusion between the meaning intended in this rule and the meaning intended for ''transfer train'' in the power brake rules (49 CFR 232.5). ''Transfer train'' in the power brake context expressly includes trains that pick up or set out cars at industries while en route, and ''transfer service'' in this rule refers to trains that travel from a point of origin to a point of destination that do not engage in switching. Finally, FRA added a definition for ''other short-haul passenger service'' because this term, which had previously been incorporated in the definition of commuter service, but is now expressly included in the same exception as ''commuter service'' requires a definition in accordance with the one FRA has previously published in its interpretive statement in 49 CFR part 209, Appendix A. This addition does not represent any substantive change from the NPRM.

Amendment to § 229.9, Movement of Non-Complying Locomotives

The final rule adds paragraph (g) to § 229.9, which prescribes requirements for the movement of non-complying locomotives. The purpose of this addition is to clarify that the provisions set forth in the new §§ 229.137 and 229.139 establish criteria for the movement or handling of locomotives that are discovered to have defective or unsanitary sanitation compartments at the time of the daily inspection. These new criteria for units with defective sanitation compartments supercede those set forth in paragraphs (a)–(c) of § 229.9, which require moving designated locomotives as lite or dead, under certain circumstances, and sometimes require enroute failures to be addressed at the nearest forward point where the necessary repairs can be accomplished. These new criteria for units with defective sanitation compartments also supercede the language in § 229.21(a) and (b), that requires defective items to be repaired prior to departure. As FRA and the Working Group examined the issue of sanitation on locomotives, it was determined that alternative requirements would be more appropriate for the handling of locomotives that are otherwise fit for service, but possess a defective toilet or ventilation system in the sanitation compartment. The power available in these units can be utilized in the train consist, without introducing safety and health hazards associated with the equipment and train movement. The hazards employees face in the presence of defective or unsanitary facilities are addressed by the requirements set forth in the new §§ 229.137 and 229.139.

Amendment to § 229.21, Daily Inspection

The final rule revises § 229.21 to be consistent with the new requirements in §§137 and 139. As currently written, § 229.21 requires railroads to repair all items noted on the daily inspection report prior to using the locomotive. However, the new §§ 137 and 139 permit locomotive units with certain non-complying conditions to remain in service beyond the date on which the daily inspection occurs. For instance, carriers may use a locomotive with a defective toilet facility in switching service for a period of up to 10 days, at which time the unit must be repaired or used in the trailing position. Also, the

railroad may continue to use a locomotive that possesses a defective modesty lock until the next 92-day inspection, at which time the modesty lock must be repaired.

The fourth sentence of paragraphs (a) and (b) have been revised to note this change as a result of the new requirements in §§ 137 and 139. In addition, the fifth sentence of paragraphs (a) and (b) has been modified to note that the railroads may choose to record repairs of conditions that don't comply with §§ 229.137 and 229.139 electronically, rather than on the daily inspection report. Some of the carriers have stated that they have electronic repair reporting systems in place that work more efficiently than paper records. FRA sees no reason to thwart these ongoing programs, so long as they are capable of being audited and effectively track repairs.

Section 229.137(a) Sanitation, General Requirements

This portion of the sanitation standard sets forth the primary requirements for equipping lead locomotives in use with sanitation facilities. FRA's primary concern is providing locomotive crews in the lead units with access to private toilet and washing facilities, that are equipped with adequate ventilation, toilet paper, and trash containers. Paragraph (a)(1) requires each lead locomotive in use to contain a sanitation compartment, except as indicated in paragraph (b) where exceptions to this requirement are set forth, or where a unit is designed such that no sanitation compartment exists. For instance, certain locomotive units used by Amtrak have toilet facilities located in the engine room, which is enclosed by a door and otherwise meet the requirements of this paragraph. For purposes of this standard, the engine room on these Amtrak units constitutes the sanitation compartment.

The sanitation compartment must be adequately ventilated; equipped with a door that closes and possesses a modesty lock; equipped with a toilet facility that meets the requirements of the definition described above; equipped with a washing system that meets the requirements of the definition described above, unless the railroad otherwise provides the washing products to employees when they report for duty or occupy the cab for duty (typically in crew packs), or where the locomotive possesses a stationary sink that is located outside the sanitation compartment; equipped with sufficient toilet paper to meet employee needs, unless the railroad otherwise provides toilet paper to employees when they report for duty or occupy the cab for duty (typically in crew packs); and equipped with a trash receptacle, unless the railroad otherwise provides portable trash receptacles for use in the sanitation compartment to employees upon reporting for duty or occupying the cab for duty (typically in crew packs).

The Working Group and FRA determined that ventilation in the sanitation compartment on much of the existing equipment is a simple vent in the wall that opens to facilitate the exchange of fresh air with air in the toilet area sufficiently addresses ventilation. According to discussions with the Working Group, which consists of parties who use and maintain locomotives, these vents adequately diffuse offensive odors, so long as the toilet is sanitary and operating. This vent must be capable of opening or closing on command or control of the user in order to meet the requirement of ''adequately ventilated.'' Other ventilation systems on older locomotive equipment must operate as intended, evacuating the air in the sanitation compartment, in order to meet the proposed standard.

The ventilation systems on new locomotive equipment are more complex. The cab's air flow is controlled and pressurized to maximize air flow and equipment performance, and minimize noise levels in the cab. In order to comply with the requirement concerning ventilation for these newer units, that portion of the ventilation system required to provide air movement in the sanitation compartment must be operative, or other, effective alternative provisions for ventilation of the sanitation compartment must be made.

If the ventilation system for the sanitation compartment is defective as of the daily inspection, the railroad may not use the unit in the lead position, unless repaired. If not repaired, the railroad may use the locomotive in trailing position, in switching service consistent with the requirements of section 137, paragraph (b)(1)(ii), or in transfer service consistent with the requirements of section 137, paragraph (b)(1)(iii). The rationale for permitting this usage when the ventilation system is inoperative is that trailing units are unoccupied, and so no harm would come from utilizing the locomotive in that position, and the exceptions set forth in section 139(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere.

It is important to note that a clean, operable toilet facility will prevent harmful gases or persistent, offensive odors from developing in the first place, and so the most productive way to eliminate the risk of noxious air in the cab is to focus attention on maintaining the toilet facility properly. It is also important to note that if the toilet room door is designed to be equipped with seals, when the seals are maintained and replaced as needed, odors are less likely to migrate to the interior of the cab. If applicable, replacing faulty sanitation compartment door seals would be advisable to further protect the cab occupants from offensive odors, although the final rule does not require such replacement.

Section 137(a)(2) requires the sanitation compartment to possess a door that closes, and the door must be equipped with a modesty lock. A door which closes is one that, by design or device, stays shut when the user closes it. For instance, a typical interior, residential door with a door knob is a door that closes. Also, a door that possesses a spring device that pulls the door closed after opening constitutes a door that closes. Similarly, doors used to enclose bathrooms on airplanes close when pulled shut, by way of a device similar to a door knob, and would meet the standard set forth here. (These doors also possess modesty locks to prevent unwanted intrusion). FRA does not mandate the type of closing door the locomotive must possess, so long as the door closes by design or on command of the user. This requirement is necessary to provide basic privacy to employees using the sanitation facilities. A modesty lock is a device operated by the occupant from inside the toilet compartment that prevents entry by a person who is not aware that the compartment is occupied. A modesty lock can typically be disabled from the outside in the event of an emergency that requires entry from outside the toilet compartment. FRA believes employees should have the expectation of privacy when using toilet facilities, consistent with similar standards issued by other regulatory bodies and common sense. A door that closes and that possesses a modesty lock provides that privacy.

The railroads on the Working Group expressed some concerns about a modesty lock that would prevent entry in the event of an emergency, such as an accident or health problem. As defined in the rule, the railroads may utilize modesty locks that can be disabled in an emergency, so long as the lock prevents an accidental or unnecessary intrusion. FRA does not prescribe specific requirements concerning the form of the modesty lock. Some of the railroads

utilize fairly sophisticated expensive devices, and some utilize an inexpensive, rudimentary slide device. These achieve the desired level of privacy, and also provide the employer with the ability to enter the compartment in the event of an emergency. Either meet the requirement. As FRA understands it, most locomotives are currently equipped with closing doors that have modesty locks, and if not, the costs associated with adding modesty locks to unequipped units are minimal. In the Working Group discussions, the industry representatives indicated that all units could be equipped with modesty locks by October 6, 2003.

The rule requires all sanitation compartments to be equipped with a closing door as of the daily inspection. However, if the modesty lock is defective as of the daily inspection, the railroad is not required to remove a locomotive from service. The railroad is required to repair the modesty lock on or before the next 92-day inspection required by part 229.

Section 229.137(a)(3)–(a)(4) require toilets and washing systems in lead locomotives in use. FRA understands that there are many varieties of toilet facilities that function effectively on board locomotives, and there are likely to be technological improvements that will bring about new units in the future. The rule takes a performance approach to toilet and washing systems, rather than specifying units by name in the definition, so that effective existing systems and systems not yet developed, are not unintentionally excluded.

As discussed above, FRA does not wish to prescribe a particular type of washing system. However, each lead locomotive must have one of the systems outlined in the definition available for employee use. This paragraph states that the washing system must be located in the sanitation compartment, unless it is otherwise provided to employees when they report for duty, enter the cab for duty, or where the locomotive possesses a stationary sink that is not located in the sanitation compartment. Based on discussions with the Working Group, FRA understands that on some locomotives, washing systems are located in the toilet compartment, but in many cases they are provided to employees in crew packs. Many railroads give crew packs to employees as they begin each work shift, and they typically contain antibacterial soap, paper towels or moist towelettes, toilet paper, and perhaps bottled water. As stated above, FRA sees no need to require the railroad to maintain washing products in the sanitation compartment, so long as employees receive them in crew packs at the beginning of their shift. The crew packs will be made available to crews at their reporting point or onboard the locomotive. The employer must provide these items to employees.

This paragraph also permits sinks located adjacent to the sanitation compartment to remain outside the sanitation compartment. According to information received from the Working Group, at least one Class I railroad maintains locomotives with stationary sinks that are not in, or capable of being placed in, the sanitation compartment. FRA sees no safety or health risk associated with this configuration and, therefore, the standard does not prohibit this.

Section 229.137(a)(5) states that the sanitation compartment must contain toilet paper in sufficient quantity to meet employee needs, unless the railroad otherwise provides employees with toilet paper when they report for duty or occupy the cab for duty. FRA chose not to prescribe a specific amount of toilet paper for each employee in the cab, believing that this issue is best handled through common sense decision making at the local level. As FRA understands it, some railroads maintain toilet paper in the sanitation compartment, and some rely on crew packs for dissemination of toilet paper. FRA believes either method is adequate, so long as reasonable amounts of toilet paper are provided to meet typical daily needs. If it is determined during the daily inspection that a locomotive is not equipped with sufficient toilet paper, the unit must be equipped prior to departure. For most railroads, this requirement will be accomplished by the use of crew packs, which contain ample toilet paper for each employee's work shift.

Section 229.137(a)(6) requires each sanitation compartment to contain a trash receptacle, unless the railroad provides portable trash receptacles in the employee crew packs. This requirement attempts to provide flexibility to the railroad where space limitations in locomotive sanitation compartments prevent an across-the-board requirement for permanent trash cans or similar fixtures in all sanitation compartments. Therefore, the trash receptacle may be a permanent trash can or similar fixture in the sanitation compartment, or the trash receptacle may be a small plastic bag that hangs from the door handle or is posted to an interior wall. In addition, where the space limitations in the sanitation compartment prohibit placing any sort of trash receptacle in the sanitation compartment, portable trash bags that can be included in the employee crew packs may be placed outside the sanitation compartment. In these instances, the Working Group and FRA expect that the trash bags will be placed at a location that is as far from the cab stand as possible, such as in the nose of the cab. FRA and members of the Working Group wish to segregate sanitation-related trash from the area where employees work and often eat during the course of the work shift. In large measure, the location of the portable trash bags will be controlled by the employees working in the cab, who have a natural interest in keeping the sanitation-related trash away from the work and eating areas of the cab.

If it is determined during the daily inspection that the sanitation compartment is not equipped with a trash receptacle, or the crew has not been provided one in a crew pack, the railroad must equip the locomotive with a trash receptacle prior to departure. This may be accomplished by placing a trash receptacle in the sanitation compartment, or by providing portable trash receptacles to employees in their crew packs when they report for duty or occupy the cab for duty.

Section 229.137(b) Exceptions

Paragraph (b) of § 229.137 sets forth exceptions to the general requirements proposed in paragraph (a), discussed above. Paragraph (b)(1)(i)–(v), set forth exceptions to the general requirement of a sanitation compartment in each lead locomotive in use. These exceptions accommodate unique circumstances.

Paragraph (b)(1)(i) exempts locomotives used in commuter service or other short-haul passenger service where employees have access to sanitation facilities at frequent intervals, either at stations or elsewhere on the train. ''Commuter service'' and ''other short-haul passenger service'' are defined at length in 49 CFR part 209, Appendix A. Most commuter and other short-haul runs are relatively short in duration, and provide many opportunities during a work shift to use facilities at downtown or outlying terminals. Typically, cab crews in commuter service may use sanitation facilities in the stations they service in the course of their route, or in the passenger cars they are hauling. Therefore, FRA sees no need to require the locomotive cabs in commuter operations to also possess a sanitation facility. In most cases, the configuration of commuter locomotives differs from traditional freight locomotives. Most do not currently possess sanitation compartments and there may be no

additional space to add such a compartment.

This exception makes clear that the sanitation facilities employees use must be provided by the railroad. In other words, the employer may not utilize this exception to the general requirement if employees are forced to use sanitation facilities in businesses along the right-of-way that have no connection to the employer, such as restaurants, plants, or convenience stores. The rule requires each commuter railroad operation subject to these standards to provide sanitation facilities, and employees must not be placed in situations where they are forced to request permission to use the sanitation facilities of foreign establishments during the workday. So long as these conditions are met, and because the nature of commuter operations affords employees the opportunity for frequent access throughout the shift, FRA sees no reason to impose a new, costly requirement for cab toilets on commuter railroad locomotives.

Paragraph (b)(1)(ii) permits all locomotives engaged in switching service, where employees have access to railroad-provided sanitation facilities outside of the cab, to operate without a sanitation compartment in the cab. ''Switching service'' is defined as the classification of freight and passenger cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement. This definition is taken from the power brake regulations (49 CFR 232.5) and will be construed as the term is used in those rules.

The exception for switching service is similar to and based on the same general principle as the exception provided for commuter service. Employees engaged in switching service are typically in the cab for relatively short periods of time, and have access to sanitation facilities in rail yard buildings or railroad facilities along the right-of-way. Generally, these employees are not captive in a locomotive cab for long time periods, where a sanitation facility clearly must be provided. Therefore, the rule permits locomotives used in switching service to operate without a toilet in the cab, so long as employees have ready access to railroad-provided sanitation facilities along the right-of-way or in yard facilities at frequent intervals during the work shift. If a railroad is unable to provide the alternate access, this exception cannot apply. If the switching activity places cab employees at locations where railroad sanitation facilities are not accessible to employees, then the carrier must provide a locomotive that is equipped with all of the items required by paragraph (a) of this section.

Paragraph (b)(1)(iii) relates to transfer service, and tracks the same logic as the exceptions proposed for commuter operations and switching service. Transfer service involves trains that travel between a point of origin and a point of final destination not exceeding twenty miles and that do not perform switching service. Because the cab employees engaged in transfer service generally have the opportunity to use railroad-provided sanitation facilities, as needed during the course of their work shift, the existing locomotives used in transfer service do not have to contain a sanitation compartment. These employees are less likely to face long periods of time in the locomotive without access to sanitation facilities in rail yard buildings or at railroad-owned facilities along the right-of-way. If the railroad is unable to provide such facilities to accommodate employee needs, then the carrier must utilize locomotives that possess toilet facilities that otherwise meet the requirements of this proposal. (It is important to note that these requirements prohibit removal of toilet facilities from locomotives engaged in transfer service, if the locomotives are equipped with a toilet on the effective date of the final standards. Also, all locomotives manufactured after the effective date of the final rule must be equipped with a toilet facility accessible without going outside the locomotive. These requirements are discussed in greater detail below.) Finally, it is important to note that ''transfer service'' has a different meaning than the term ''transfer train'' as used the freight power brake regulations (49 CFR 232.5). In the power brake rules, trains that pick up or deliver cars at industries before arriving at the point of destination are nevertheless transfer trains. However, in this rule, made clear by the NPRM definition of ''transfer train'' FRA and the working group did not intend to include in the exception trains that stop en route to perform switching, because employees on such trains often are captive in the cab for long periods of time without an opportunity to use bathroom facilities.

Paragraph (b)(1)(iv) exempts locomotives of Class III railroads that are not equipped with toilet facilities, and that are not engaged in switching or transfer service, from the requirement of having a toilet facility in the cab. However, these Class III railroads must provide or arrange for sanitation facilities along the right-of-way. (It is important to note that these requirements prohibit removing toilet facilities from locomotives, if those locomotives are equipped with a toilet on the effective date of the final standards. This is discussed in detail below.)

Most Class III railroads are small businesses with limited capital margins. (The current definition of these entities, as established by the Surface Transportation Board, is a railroad that earns $20 million or less in annual operating revenues.) Typically, purchasing new locomotives would be out of the question for these companies, and spending considerable funds to retrofit old units could mean that critical safety programs in other disciplines would suffer. The older locomotive equipment generally cascades down to the Class III railroads, and over time the Class III railroads will acquire toilet-equipped locomotives. Currently, many of the older locomotive units are not equipped with toilet facilities, and some of the units actually lack space for toilet facilities, depending on the purpose it was originally intended to serve. FRA believes that it would create great financial hardship for these entities to require sanitation retrofits or new locomotive purchases. Some of the small operators might simply opt out of the industry, and for others, the diversion of funds could create safety problems elsewhere. Therefore, this exception should help to ensure that the sanitation standards do not give rise to additional safety concerns or destroy otherwise productive business concerns. However, the Class III railroads that choose to avail themselves of this exception must provide or arrange for adequate sanitation facilities, which means they must be available to employees readily, frequently, and as needed along the right-of-way.

This exception does not permit a Class III railroad to advise employees to use sanitation facilities at restaurants and other public establishments that have no business connection to the carrier. These Class III employers may not assume that employees will locate sufficient sanitation facilities on their own. The Class III railroad must take affirmative action to see that the cab employees have frequent access, as needed, to adequate sanitary facilities. If it is not possible for the railroad to provide adequate sanitary facilities along the right-of-way, then it will consult with customers or other businesses along the route for the

specific purpose of garnering access to adequate sanitation facilities for employees. In addition, the Class III railroad must communicate to employees the locations and, as appropriate, hours of availability of access to the sanitation facilities provided by the carrier via customers or other businesses along the route. FRA and the Working Group expect that the Class III railroad will consider 24-hour railroad operations in these determinations, and which facilities will be available during every work shift.

Paragraph (b)(1)(v) states that locomotives of scenic, tourist, historic, or excursion railroads, which are not steam-powered, which operate on the general system, and are otherwise covered by the locomotive safety standards set forth in 49 CFR part 229, are not required to be equipped with compliant toilet facilities, so long as employees working in these locomotives have access to appropriate facilities at frequent intervals during their work shift. The rationale for this proposal is similar to the proposed exceptions for Class III entities. The railroads addressed by this paragraph have limited profit margins and utilize older equipment that may not possess sanitation facilities on board. The costs to retrofit these units would adversely impact the viability of these operations, and on some of the present equipment, may not be possible. FRA believes that so long as the employees who work on these units are provided appropriate facilities throughout the course of the work shift, there would be no reason to require these locomotives to be equipped with sanitation facilities.

Representatives of tourist and excursion railroads suggested that this paragraph should be changed to state that the tourist operator or employer is responsible for providing access to adequate toilet facilities rather than the ''railroad carrier.'' Some tourist operations may not be ''carriers'' under other federal laws. Also, as written in the NPRM, there may be confusion concerning whether the tourist operator or the owner of the track on which the tourist organization travels is responsible for providing access to facilities. FRA has changed the final rule to state that the tourist railroad must arrange for sanitary facilities.

It is difficult to define with specificity the terms ''ready access'' and ''frequent intervals,'' which are used in paragraphs (b)(1)(i)–(b)(1)(vi). FRA and the Working Group spent a great deal of time discussing the terms and the concepts they convey. All struggled with appropriate language that would capture the concepts accurately and still provide sufficient flexibility to accommodate the changeable nature of railroad operations. The Working Group discussed establishing specific time periods or distances traveled that might equate to a satisfactory and concise definition of these terms. However, members of the Working Group recognized that individuals' access needs vary greatly from person-to-person and from day-to-day. Further, the Working Group noted that it may take 5 hours to traverse 5 miles on a given day, depending on traffic, weather, load, and other considerations. Therefore, the Working Group rejected the notion of a hard and fast time or mileage limit as an appropriate solution to this question.

Instead, the Working Group offered an explanation of the concept of adequate access to sanitation facilities, where locomotives covered by these exceptions are not equipped with a toilet facility: on reasonable demand or need by a crew member, the local railroad officials would make immediate accommodations to provide access to the railroad's sanitation facilities at frequent intervals during the course of their work shift. As used here, the term ''immediate accommodations'' means that the employer would begin the process of providing access to sanitation facilities when the employee requests it.

The general principle that FRA and the Working Group intend to capture with these terms is that employees would have access to sanitation facilities, as the need arises, that are located in close proximity to the work site, and that are owned or operated by the railroad. In many circumstances, these terms simply mean an employee could disembark from a locomotive in a yard, use a toilet in a nearby building, and then return to the locomotive. However, if employees work in remote locations where sanitation facilities do not exist, the railroad would be required to provide employees with alternate transportation to a nearby site, in order to make use of one of the exceptions listed above. These terms follow the logic of standards promulgated by the U.S. Occupational Safety and Health Administration (OSHA) and its recent interpretation, which place priority on access as the need arises. This principle is important because of the adverse health effects that may occur if access is denied. Also, this principle enhances an employee's ability to focus on the work being done, and improves the likelihood that safe train movements will occur.

It is important to note that each of these exceptions require the carriers to provide facilities that ''meet otherwise applicable sanitation standards.'' This means that the alternate sanitation facilities offered by the carrier must meet the state or federal standards for sanitation equipment and servicing that apply to that workplace. For instance, if the alternate facility is located in an office building along the right-of-way that falls within the authority of OSHA for purposes of sanitation, this rule requires the railroads to select facilities that meet OSHA standards concerning the presence and condition of toilet and washing facilities. FRA is exercising jurisdiction over cab employee access to sanitary facilities, specific sanitation equipment on rolling stock, and the servicing and use of that equipment on rolling stock. FRA does not intend to oust OSHA's existing authority with respect to sanitation equipment, or its maintenance, where it exists elsewhere. Of course, FRA will not enforce the ''otherwise applicable standards;'' the agency with enforcement authority (OSHA in the example set forth here) must do so. In addition, FRA will not determine the applicability or correct interpretation of another agency's sanitation standards or whether those standards have been violated. That will also fall within the authority of the agency that promulgated the applicable standard and FRA will rely on the determinations of those other agencies.

Paragraphs (b)(2)(i) and (b)(2)(ii) provide exceptions to the requirement of a toilet facility that conforms with the definition of toilet facility, until those nonconforming toilet facilities have been replaced with compliant ones. Paragraph (b)(2)(i) addresses a specific type of toilet facility that a Class I railroad possesses on approximately 500 locomotive units. This toilet, referred to as a ''bogan,'' is similar to portable toilets that are often used at outdoor events, where the need for mobile, basic toilet facilities exists. This toilet does not meet the requirements of the definition for toilet facility, has no flush mechanism and simply permits waste to fall to a tank below the toilet seat for storage, treatment, and periodic disposal. Chemicals are placed in the storage tank to treat waste and minimize odors that would otherwise accumulate. Maintenance of these toilets may be a greater challenge than is the case with more contemporary technology, and failure to properly maintain them could result in unacceptable conditions.

The Class I railroad owner of the bogan toilets is replacing these units as they become defective, and is retiring them as the locomotives on which they are situated are retired. The bogan toilets are being replaced with toilets that incorporate advanced technology.

For that reason, the Working Group recommended that FRA permit these toilets to remain in use until they are retired by the carrier as part of the railroad's plan for replacing them. The rule text permits the bogan toilets to remain in service on this Class I railroad until they become defective or are replaced with conforming units, whichever occurs first. Although FRA would prefer more modern systems in place on all locomotives, FRA is not presently aware of an imminent, serious safety or health risk associated with the bogan that calls for immediate removal. Given the costs associated with toilet retrofit and the carrier's own plan to replace the units, FRA believes that an exception is appropriate. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

This exception applies only to the Class I railroad that FRA knows possesses these toilet systems. FRA is unaware of any other railroads that use this toilet, and after requesting comments, believes the unit is isolated on this particular railroad.

In connection with this exception and the exception set forth in paragraph (b)(2)(ii), it is important to note that certain state standards may require flush toilets for cab employees, and this final rule preempts those standards. Therefore, FRA wishes to make every effort to minimize the use of non-flush systems. FRA and the Working Group have no desire to issue or recommend standards that ultimately permit the use of systems that are more rudimentary than those permitted by existing state standards. However, FRA understands that certain accommodations may be necessary in the short term in order to achieve that goal.

Paragraph (b)(2)(ii) addresses a similar situation that exists on another Class I railroad, in which the toilet facility in place on a majority of the carrier's locomotives does not comply with the proposed definition of toilet facility. These toilet facilities use railroad-provided plastic liners to collect human waste; these liners are then sealed, placed in sealed waste containers, and delivered by the employees to the railroad for disposal. Although the carrier believes this system adequately addresses sanitation needs for cab employees, concerns about the system have been raised by employees, landowners along the right-of-way, and certain State agencies. Further, as the carrier recognizes, proper administration of this system off the carrier's home lines sometimes is not practicable, and ''power sharing'' arrangements in the railroad industry are growing. FRA agrees that this system should be retired, but also recognizes the significant capital and labor costs associated with a massive retrofit campaign. The railroad has initiated a replacement program in which approximately 30 locomotives per month are being retrofitted with new toilet facilities that comply with the rule. In addition, this carrier has decided not to deliver locomotives with the older toilet facilities in the lead position to other railroads in interchange, and the final rule incorporates that restriction for the period of retrofit. Finally, this carrier has stated its intention to make every reasonable effort to place compliant locomotives in the lead position on its system wherever possible. FRA and the Working Group are satisfied at this point in time that the retrofit program and the carrier's commitment to place locomotives with compliant toilets in the lead where possible, is the best solution to the problem presented.

Based on the number of units in need of retrofit, FRA and the Working Group estimate that all of the railroad's locomotives are capable of being in compliance with the final rule by July 1, 2003. Therefore, the rule permits the Class I railroad to operate locomotives in the lead position on its lines with non-compliant units until July 1, 2003. After that date, all lead units must possess compliant toilet facilities. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

This exception applies only to the Class I railroad that FRA knows possesses these toilet systems. FRA is unaware of any other railroads that utilize this toilet, and the AAR has confirmed that in its comments.

Paragraphs (b)(2)(i) and (b)(2)(ii) relate only to the type of toilet facility in use. The other requirements set forth apply to these railroads and their equipment according to their terms. For instance, the requirements set forth in paragraphs (a)(1)–(2), and (a)(4)–(6) apply to these locomotives. Similarly, § 229.139, which relates to servicing and operative equipment, requires the units covered by paragraphs (b)(2)(i) and (b)(2)(ii) to operate as intended and be located in sanitation compartments that are ventilated and free of debris and waste.

Paragraph (c) of section 137 prohibits a railroad from placing a locomotive with an unsanitary or defective toilet facility in the lead position. This determination is made as of the time of the daily inspection required by 49 CFR 229.21. En route failures that occur after the daily inspection impose no burden on the railroad, until the next daily inspection is due. However, according to Working Group members, the current railroad practice concerning en route toilet failures is to move defective toilet units into a trailing position, where it is possible to do so. Although the final rule does not require such movement, the enhanced focus on sanitation facilities that will naturally occur as a result of this standard should increase the likelihood that the practice will proliferate.

The requirement set forth in paragraph (c) reflects the fundamental need to provide employees with a clean, safe workplace. It is inconsistent with notions of decency and the minimum requirements for workplaces in other industries to expect employees to work effectively and safely if unsanitary waste or deplorable odors are present. The Working Group agrees with this principle and believes that the final rule is appropriate for the railroad industry. In order for a locomotive to be placed or remain in the lead position as of the daily inspection, all aspects of the toilet facility must be operating as intended and it must be clean. The chemicals required by certain systems must be supplied in the appropriate amount so that the toilet will operate properly; if the system calls for antifreeze, it must be present during winter months to prevent freezing; any integral flush mechanisms or sensors must operate as intended; and all components of the system intended to be present must be present.

As discussed above, the rule defines the terms ''unsanitary'' and ''sanitary'' to help the industry and FRA inspectors determine which conditions may be noncompliant. FRA believes that most individuals have a general sense of conditions that constitute unsanitary facilities, and FRA inspectors will utilize that sensible approach to enforcing this standard. The definitions should provide additional clarity to that process.

In discussions prior to publication of the NPRM, members of the Working Group raised concerns about the difficulties of providing a substitute locomotive that possesses a sanitary, operable toilet facility on branch lines in remote locations. Although rare, these instances might occur where no compliant locomotives are available, and so a defective unit and its freight could not move for repair. Therefore, FRA and the Working Group developed an exception for these instances, proposed it in the NPRM, and placed it

in the final rule in paragraph (c). All of the conditions listed below must be present in order for the exception to apply:

—The defective or unsanitary condition must be discovered at a location where there are no other suitable (i.e., having sufficient power to complete the haul) locomotives available for use. Where it is not possible to switch another locomotive into the lead position due to space or track limitations, or where the location is not equipped to repair or clean the locomotive, there are 'no locomotives available for use';

—The locomotive, while noncompliant, has not traveled through a location where it could have been cleaned, repaired or switched with a compliant locomotive since its last required daily inspection;

—Upon reasonable request, the carriers must arrange for access to toilet facilities for employees assigned to work on the locomotive during the time they must work on it;

—If unsanitary conditions exist, the sanitation compartment door must be closed and sufficient ventilation provided to the cab compartment so that employees aren't exposed to strong, persistent chemical or human waste odors sufficient to deter use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes; and

—The locomotive must be repaired, cleaned or switched with a compliant unit at the next daily inspection or the next location at which such service can take place, whichever occurs first.

This exception cannot be used where a second locomotive exists, but it also contains a defective or unsanitary sanitation compartment. The rule does not encourage deferral of necessary maintenance and cleaning where locomotives can reasonably be expected to be pressed into service as lead units at any time. This exception is available only where there is just one locomotive available and it possesses a defective or unsanitary sanitation compartment, or where there is no additional track to use to facilitate switching a compliant locomotive into the lead position, and all of the other conditions listed in the rule text are present.

In order to fall within this exception, the rule requires the railroad to arrange for access to a toilet facility outside the lead locomotive, upon reasonable request of an employee assigned to work onboard the locomotive. While it remains the responsibility of the railroad to provide access to a toilet facility, FRA expects that access will be achieved by a means as simple as the crew making use of a toilet facility at a known place of business, such as a restaurant, that is regularly frequented by the crew during their breaks. However, access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards may not be available to the crew during the work shift for reasons such as personal safety while not on railroad property, or simply because the time required for to walk to a toilet facility may impede railroad operations. In these situations, the railroad may meet a reasonable request by providing transportation to a toilet facility during the work shift.

This exception is distinct from the other exceptions in paragraph 137(b) that use the terms ''ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift.'' Because the branch line situation typically involves remote locations where ''ready access'' in not possible and should occur rarely, the rule imposes a different standard than is required in other operational settings.

Paragraph (d) of section 137 requires that when a railroad finds a toilet facility defective or unsanitary at the time of the daily inspection, the carrier may utilize the unit in a trailing position. However, if the unit is subsequently used to haul employees, it must be cleaned prior to occupancy and defective toilet facilities must be clearly marked as unavailable for use. This paragraph and others that follow establish the requirement that occupied locomotives should not expose employees to unsanitary conditions. FRA recognizes that locomotive toilets periodically malfunction. The railroad should not be penalized for these events, and under prescribed circumstances, should be able to utilize the available power in the equipment. However, the railroad must minimize employee exposure to the hazards of untreated waste and other unsanitary conditions. Therefore, the carrier must clean any trailing units if they will be occupied, and must mark defective toilet facilities so that employees understand the toilet facility cannot be used.

During this process, the Working Group did not believe it necessary to require a standard method for identification of defective sanitation units, and FRA sees no reason to do so either. Some carriers use a red tag to indicate defective conditions, and some railroads tape the toilet seat so that it cannot be used. Either method, and others that may be in use, are sufficient, so long as a reasonable person entering the cab would understand that the toilet facility is defective and should not be used.

Paragraph (e) states that when it is determined during the daily inspection that a road locomotive toilet facility is defective, but sanitary, the railroad may move the locomotive into switching or transfer service for a very brief period of time, consistent with the requirements for that service, as discussed above. The unit may be used in this service for a period not to exceed 10 days, at which time it must be repaired or used in trailing position. If the railroad chooses to utilize the equipment in this manner prior to its repair, the carrier must clearly mark the defective toilet facility so that a reasonable person would know not to use the toilet facility. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service.

Paragraph (f) of this section requires that if a carrier discovers during the daily inspection that a lead locomotive is not equipped with sufficient toilet paper, washing facilities, or a trash receptacle, the carrier must equip the unit prior to departure. This reflects FRA's belief that it would be unwise to require a railroad to change the consist makeup due to a lack of toilet paper, washing facilities, or a trash bag. These items are relatively easy to locate and supply to cab crews, and so should be provided before any employee is expected to depart. Therefore, the railroad must simply equip the locomotive with these items prior to departure. Most railroads supply these items to cab employees as they begin their work shift, and so this requirement should not impose burdens on the industry.

Paragraph (g) states that when it is discovered during the daily inspection that the sanitation compartment ventilation is defective, the carrier must repair it prior to departure, or place the locomotive in trailing position, in switching service consistent with the requirements of paragraph (b)(1)(ii), or in transfer service consistent with the requirements of (b)(1)(iii). As discussed earlier, the rationale for permitting this usage when the ventilation system is inoperative is that trailing units are

typically unoccupied, and so no harm would come from utilizing the locomotive in that position. In addition, the exceptions set forth in section 137(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere, and so employees would be using ventilated facilities in those circumstances.

Paragraph (h) of section 137 provides that if the sanitation compartment is not equipped with a door that closes when pulled shut as of the daily inspection, the door must be repaired prior to departure, or the locomotive must be moved from lead position to trailing, transfer service, or switching service. In addition, this paragraph states that if the modesty lock, required to be present in order to prevent unintended intrusion, is defective as of the daily inspection, the locomotive may remain in use in the lead so long as the lock is repaired by the date on which the next 92-day inspection is due. (See discussion for § 229.139(e) below.) The rationale for this requirement is that the first priority for cab employees is to have the benefit of a door that closes while using toilet facilities for each assignment in a lead locomotive in use. Therefore, the door must close as designed, as of the daily inspection. So long as the compartment door closes as it should, a unit with a defective modesty lock may remain in service until the date on which the next 92-day inspection is required. FRA believes that affirming an employee's expectation of privacy while using toilet facilities will contribute to appropriate use of the facilities and consequent good health. The rule balances legitimate employee privacy needs, by requiring a door that closes, and the legitimate difficulties associated with making use of a locomotive while moving it to the correct repair facility, by permitting the locomotive with a defective modesty lock to remain in service for a limited time period.

Paragraph (i) provides that all locomotives which are equipped with a toilet facility on the effective date of the final sanitation rule must retain and maintain those toilet facilities, even where the locomotive units might be relegated to switching service or transfer service where toilet facilities are not always required by this proposal. There is a small exception to this proposed requirement, which involves cabs that are not occupied. If a railroad downgrades a locomotive to ''booster'' or ''slug'' service, removing many of the interior appurtenances so that the unit is no longer intended to be occupied in movement, the carrier may also remove the toilet facility. Railroads must retain toilets in equipped units in order to provide the most accommodating access to sanitation facilities available—an operable toilet on board the locomotive. A toilet facility on the locomotive is preferable to one along the right-of-way. Employees can utilize it as the need arises, which diminishes the risk of health problems. They would not be forced to leave running equipment on the track or slow planned operations, which can create safety risks. Also, as older locomotives cascade down to the Class III railroads, this requirement enhances the likelihood that small entities will inherit locomotives equipped with toilet facilities.

Paragraph (j) requires all locomotives manufactured after the effective date of this rule to include a toilet facility accessible to cab employees without walking outside. The design may require walking out of the cab into other compartments of the locomotive, but walking outside to use the toilet is disfavored. This paragraph prohibits railroads from using any locomotive built after the rule's effective date unless it is so designed. This paragraph reflects FRA's desire that all cab employees will work in a locomotive equipped with a toilet facility in the future.

There are two narrow exceptions to this standard relating to switching units that are built exclusively for switching service and commuter locomotives designed exclusively for commuter service. With respect to the switching service exception, the Working Group and FRA recognize that units that are created exclusively for yard service are often too small and oddly shaped to accommodate a toilet facility. Also, because of their size and configuration, these units are not used on long hauls over the road on which employees would need toilet facilities in the cab. Under all circumstances, these units would be used in yard service, where railroad-provided sanitation facilities exist along the right-of-way, and are available for employee use. New units used in transfer service would be required to be fitted with toilet facilities.

Similarly, the Working Group and FRA believe that commuter operations provide cab employees with sufficient access to sanitation facilities, along the right-of-way and elsewhere on the train. Therefore, FRA believes that the new construction requirements proposed in this paragraph need not include commuter locomotives.

With this requirement, FRA does not wish to chill innovation in the design of new equipment, but believes that toilet facilities should be located in close proximity to cab employees in lead locomotives, switching service, and transfer service. Members of the industry agree that this requirement is appropriate.

Finally, § 229.137(k) requires that where the washing system in place on the lead locomotive includes the use of water, the water must be potable. This requirement is consistent with the principle that nonpotable water should not be used by humans for personal cleanliness, due to bacteria that may be present. As discussed above, railroads may use waterless soaps, now available commercially, that do not require water; they may use bottled water that is potable; or they may use water in holding tanks located in the toilet compartment, so long as it meets the safe drinking water standards.

Section 229.139 Sanitation, Servicing Requirements

Section 229.139 establishes minimum servicing standards to ensure that sanitation compartments in occupied locomotives are not unsanitary or defective. Paragraph (a) states that the railroad must service the sanitation compartments of lead locomotives in use so that they are sanitary. This requirement means that the floors, toilet facility, and washing system must be free of trash and waste. It is reasonable to expect that, as a locomotive is used, some amount of dust and trash would accumulate. However, in order to meet the requirements of paragraph (a), the trash must be removed at regular intervals, and used, soiled paper products or human waste may not be present on the floor.

As drafted in the NPRM, paragraph (b) of section 139 required that all components required by paragraph (a) of section 137 for the lead locomotive must be present consistent with the requirements of sections 137 and 139, and must be maintained so that they operate as intended. FRA did not dictate when and how railroads must empty, clean, and service toilets. Members of the Working Group initially recommended that these decisions vary greatly from property to property, and depend on weather conditions, degree of use, and the toilet system in place. These members further advised that a federal standard establishing specific thresholds and time limits could result in unnecessary costs for some entities, and could actually reduce the level of safety and sanitation on others. Based on that information, FRA proposed language that required each railroad to develop an effective servicing program that suits the traffic, use, weather, equipment and other needs of the system so that cab employees would not be exposed to full toilet bowls, missing seats, offensive odors, frozen units, dirty

floors, ineffective ventilation systems, or any other condition that could reasonably be deemed unsanitary. As for mandating specific servicing requirements, FRA and the Working Group determined that the railroads, in consultation with their labor forces, are in the best position to determine when toilet facilities must be emptied and cleaned. These decisions are based on a variety of factors, including degree of use, length of trip, weather conditions, size of crew, and the specifications of the system in place. However, FRA stated that it would consider more specific requirements for servicing the toilets and invited comments.

When FRA reconvened the Working Group in August 2001 to discuss comments to the NPRM, members raised several questions about this paragraph and how the phrase ''operating as intended'' would be enforced. It became clear in the course of the discussion that there were a variety of interpretations for the phrase. Therefore, the railroads would differ in their determinations of which locomotives could remain in the lead position, cab employees would have a difficult time determining what constituted a defect to be listed on the daily inspection report, and FRA inspectors would probably apply different standards across the industry in enforcing the rule. Given this confusion, FRA and the Working Group worked to list general factors that must exist in order for a toilet to ''operate as intended''. This list has been added to the rule text in this paragraph, and applies to any compliant toilet system in use in the industry. The conditions are: All mechanical systems must function as designated; water must be present in sufficient amounts to permit flushing; for systems that use chemicals for treatment, such as the Microphor, the chemicals (chlorine tablets or any comparable oxidizing agent) must be present; and the bowl must be free of blockage that prevents the waste from evacuating the bowl. Paragraph (c) of section 139 states that any unit used in switching service, transfer service, or in the trailing position that is equipped with a toilet facility must be sanitary if the locomotive is occupied. This requirement addresses the units that might fall within the exceptions proposed in § 229.137(b)(1)(ii) and (b)(1)(iii) because of the operations they are engaged in, but nonetheless possess a toilet facility on board. If that is the case, employees may opt not to use the toilet facility, preferring to utilize other facilities along the right-of-way. However, carriers must not expose these employees to unsanitary conditions while they are in the units. Therefore, the toilet facilities may actually be defective while the unit is occupied, but they cannot be unsanitary.

Paragraph (d) states that where a locomotive is equipped with a toilet facility that has become defective, and the locomotive is utilized briefly in switching or transfer service consistent with the requirements of §§ 229.137(b)(1)(ii) and (b)(1)(iii), the railroad must mark the toilet facility as defective. The locomotive with the defective, but sanitary, toilet facility can be used in switching or transfer service for a period not to exceed 10 calendar days from the date on which it became defective, at which time it must be repaired. However, the facility must remain sanitary in this short period while the locomotive is occupied. The date on which the toilet facility became defective must be noted on the daily inspection report, so that the unit will be repaired within the prescribed time period. The carriers may need to institute new internal procedures to ensure that these defects are corrected within the required time frame, because (as some members of the Working Group have suggested), defects that need not be repaired on a daily basis, as § 229.21 requires with many defective conditions, may be forgotten. This final rule amends § 229.21(a) and (b) to permit the railroads to record repairs electronically, rather than on the daily inspection report. Several carriers noted that they currently employ an electronic tracking system of defects and repairs, and would like to include violations of §§ 229.137 and 229.139 in the existing electronic program. FRA wishes to facilitate this process, and so long as the system is capable of being audited, FRA does not believe it is necessary to regulate this internal mechanism with great specificity.

During this 10-day period, the exceptions set forth for switching and transfer service apply, and so the railroad is required to provide the affected cab employees access to sanitation facilities that meet otherwise applicable sanitation standards. (As discussed previously, these defective units may also be utilized in trailing position where there is less likelihood that employees will be affected at all.)

Providing that these defective units can remain in service for a period not to exceed 10 calendar days, at which time they must be repaired or used in trailing position, is consistent with FRA's and the Working Group's desire to preserve optimum access to sanitation facilities where they currently exist. If a locomotive is equipped with a toilet facility, FRA recognizes that it may become defective and yet the locomotive can continue to operate without jeopardizing the employee's health. However, the toilet facility should not be allowed to remain defective indefinitely. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service.

The 10-day period was selected as a result of Working Group discussions, in which the carriers noted that a period of 10 days may be required to get appropriate parts needed for repair to remote locations where these defective units may be situated. FRA invited comment on this time period, and the AAR stated that shortening it might impede the railroad's ability to correct defective units. Depending on where a locomotive is situated in relation to a repair point and the nature of the repair needed, the carriers believe ten days is an appropriate window of time. There were no other comments on this issue.

Paragraph (e) requires the railroad to repair a defective modesty lock prior to the next 92-day inspection that the locomotive is subject to, pursuant to the requirements of part 229. This was recommended by all members of the Working Group and balances the privacy concerns that led to the modesty lock requirement, against the industry's interest in keeping otherwise fit locomotives in service. FRA believes that this paragraph reaches a reasonable accommodation of both aims.

In addition to the foregoing issues, the Working Group discussed blue signal protection for railroad employees involved in servicing the sanitation compartment, and the substance of those discussions should be illuminated here. FRA issued regulations that require protections for employees engaged in the inspection, testing, repair, and servicing of rolling equipment, where those activities require employees to work on, under, or between equipment, and where the danger of personal injury exists. *See* 49 CFR part 218. These regulations state that ''servicing'' does not include supplying locomotives with sanitary supplies. *See* definition of ''worker'' at 49 CFR 218.5. Therefore, employees engaged in replenishing toilet paper in the sanitation compartment would not be ''servicing'' the locomotive for purposes of part 218, and would not

require blue signal protection. However, other duties that employees may be engaged in relating to the repair, service, maintenance or emptying of the locomotive toilet facility likely would fall within the scope of part 218 and would require the protections set forth there. This determination may depend on the toilet system in place, and so each railroad must assess the need for blue signal protection on its property based on the configuration of the system in place and the functions employees perform relative to it.

Finally, this rule does not establish lighting requirements for the sanitation compartment. The existing locomotive safety standards require that ''Cab passageways and compartments shall have adequate illumination.'' *See,* 49 CFR 229.127(b). This existing requirement effectively addresses the need for lighting in the sanitation compartment. The compartment must be illuminated so that occupants can clearly see all appurtenances, fixtures, and items present within the toilet area.

Appendix

FRA amended appendix B to part 229, Schedule of Civil Penalties, to include penalties for violations of the provisions as set forth in this rule. Please note that reading this or any penalty schedule may be confusing without first reading the corresponding rule text. There is very limited space in the penalty schedule to describe the action or omission that constitutes a violation of a particular section or paragraph. Generally, the penalty schedule is provided to give notice of the typical penalty that will be assessed for a violation. When there is not enough space to list the way(s) in which a paragraph has been violated, summaries of the requirement or forbidden act is provided. If in doubt, the rule text clearly states what is required, and the penalty schedule is provided to indicate what penalty is typically assessed.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. The regulation of sanitation facilities on locomotives gives rise to two potential environmental concerns. The first relates to handling chemicals used to treat human waste while in transit or in storage awaiting permanent disposal. These chemical substances and employee exposure to them are currently regulated by EPA and OSHA, respectively, in order to prevent degradation of the environment and harm to employees. Nothing in this final rule alters those regulations, which protect the environment and employees from the hazards associated with regulated chemicals.

The second concern relates to the disposal of untreated waste along the railroad right-of-way, which would give rise to potential environmental and employee health hazards. As FRA understands it, nearly all locomotives utilize sanitation systems that either treat or burn the waste on board and release products that do not introduce environmental or personal safety hazards; or haul the waste in treatment containers to a site where it is removed and stored for approved processing. In any event, regulations promulgated by the FDA prohibit the release of untreated human waste along the railroad right-of-way, and nothing in this proposal alters that requirement. Therefore, FRA has determined that this rule will not have a deleterious impact on the environment.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this final rule. These documents may be reviewed and downloaded from the Department's electronic docket system or photocopies may be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

As part of the regulatory impact analysis FRA has assessed quantitative measurements of costs and a qualitative discussion of the benefits expected from the adoption of this final rule. Over a twenty year period, the Present Value (PV) of the estimated costs is $70.1 million.

The major costs anticipated from adopting this final rule include: the on-going maintenance and servicing of toilet facilities that are not currently being serviced properly; an increase in the daily inspection burden to include additional components of the sanitation compartment; and providing for a separate trash receptacle in the sanitation compartment and the removal of the trash receptacles in regular intervals.

The major benefits anticipated from implementing this final rule include: guaranteed access to sanitary facilities; assurance that toilet facilities are maintained in a clean and sanitary manner; and the assurance that cab employees will have potable water to use. In addition, railroads should incur some savings from having a national and uniform regulation governing sanitation facilities. In the long-term the FRA should see a decrease in complaints and correspondence related to toilet facilities.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assesses the small entity impact. These documents may be reviewed and downloaded from the Department's electronic docket system or photocopies may be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity,'' is defined in the Act as a small business concern that is independently owned and operated, and is not dominant in its field of operation. SBA's ''size standards'' may be altered by federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published an interim policy which formally establishes ''small entities'' as being railroads that meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's (STB's) threshold of a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment. *See,* 49 CFR part 1201. In its policy statement, FRA applied this same dollar limit to determine when a railroad shipper or contractor is a small entity for purposes of the Act and the RFA. FRA proposed to use this alternative definition of

''small entity'' for this rulemaking in the NPRM. FRA received no comments on the definition, and so FRA continues to apply this definition to the final rule.

In this proceeding, there are over 550 small railroads that could potentially be affected by these standards. FRA estimates that small railroads own approximately 3,500 locomotives. In addition, the Agency estimates that only about one-third of these or less have a toilet facility on them. FRA does not expect this final rule to impose a significant burden on small railroads. This is because these railroads are provided an exemption from the requirement to have a functioning toilet in any lead occupied locomotive, if the railroad provides employee access to facilities at frequent intervals.

The impacts from this final rule are primarily a result of some of the compliance requirements for locomotives that have functioning toilet facilities. The most significant impacts arise from complying with the sanitation compartment requirements, including providing a trash receptacle, marking defective toilet facilities, and conducting the daily inspection. Most small railroads own locomotives that never had toilet facilities on them, or previously had them removed. FRA estimates that only six percent of the Regulatory Impact Analysis' (RIA) total cost over 20 years would impact small railroads.

The requirement in the final rule that will impact small railroads the most is providing cab employees ready access to appropriate toilet facilities. This standard means that small railroads must arrange for en route access to toilet facilities for cab employees. The RIA has estimated that there would be a 2-hour burden per affected railroad during the first year of implementation. In aggregate, this burden is estimated to cost approximately $22,000. The burden for the following years is only 30 minutes per railroad per year to modify the toilet facility arrangements. FRA understands that it is common practice today for Class III railroads to comply with the general requirements of providing ready access. Currently, it is customary for a small railroad to transport a crew member from a locomotive without a toilet to sanitary facilities upon request. Hence, the concept of providing ready access to toilet facilities is not a new or significant burden for most Class III railroads.

The Class III exemption from the requirement to have a toilet facility in the lead occupied locomotive is provided to ensure that a feasible lower cost alternative is available for affected small entities that need it. FRA and the Working Group understood the difficulties of retrofitting older locomotive units and saw no reason to unduly burden small railroads so long as access can be provided by alternative means. The Working Group believed that this alternative is both necessary and acceptable.

In order to determine the significance of the economic impact for the final rule's RFA, FRA invited comments from all interested parties concerning the potential economic impact on small entities caused by this final rule during the notice of proposed rulemaking stage. The Agency has considered the lack of comments and data it received in making a decision on the RFA for the final rule. Thus, FRA concludes and certifies that this final rule is not expected to have an ''significant'' economic impact on a ''substantial'' number of small entities.

Federalism

FRA analyzed this rulemaking proceeding according to the principles of Executive Order 13132 (''Federalism''), which was in effect when the final rule was prepared. FRA has determined that this final rule may have federalism implications. FRA's final sanitation standards preempt all state efforts to regulate the nature and type of access to sanitation facilities for cab employees. Further, FRA's final sanitation standards preempt the maintenance of sanitation facilities located on board trains. As was discussed in the NPRM (*See,* 66 FR 137), the Locomotive Inspection Act has been interpreted to occupy the field of locomotive safety, including the regulation of appurtenances in locomotives, such as toilets. Nonetheless, some state regulatory bodies have promulgated and enforce state standards that require toilet facilities in locomotive cabs. FRA's sanitation standards preempt those state standards. FRA believes this regulatory action is warranted, however, based on principles of interstate commerce and the need for uniformity of national standards. In addition, some State agencies have expressed the need for federal regulation in this area to provide uniform treatment and to prevent situations in which employees work without sanitation facilities where the State is powerless to enforce its requirements, due to operation of the occupational safety and health and railroad safety laws.

Consistent with the requirements of Executive Order 13132, FRA has consulted with State agencies during the course of this rulemaking. This was achieved primarily through the full RSAC Committee, which includes representatives of State interests. FRA briefed the RSAC members on several occasions concerning this standard, published notices concerning it, and held a public hearing. None of the States or their representative organizations raised concerns about any aspect of this standard. FRA made every effort to cover the subject matter comprehensively so that the federal standard does not provide less protection than any of the individual state standards, and to prevent preemption of a state law or rule without replacing it with a comparable federal standard. The States have supported FRA's rulemaking proceeding on sanitation facilities for locomotive cab employees.

Paperwork Statement—Locomotive Cab Sanitation Standards

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response (in seconds)	Total annual burden hours	Total annual burden cost
229.137(d)—Sanitation—Locomotive Defective or Unsanitary Toilet Facility Placed in Trailing Service—Clear Markings—Unavailable for Use.	Class I & II railroads	15,600 notices	90	390	$9,750
229.137(e)—Sanitation—Locomotive Defective Toilet Facility—Clear Markings—Unavailable for Use.	Class I & II railroads	15,600 notices	90	390	9,750

CFR section	Respondent universe	Total annual responses	Average time per response (in seconds)	Total annual burden hours	Total annual burden cost
229.139(d)—Servicing—Locomotive Used in Transfer/Switching Service with Defective Toilet Facility—Date Defective.	Class I & II railroads	93,600 notations	30	780	19,500

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; 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.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, FRA Desk Officer, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA hereby provides notice that it cannot impose a penalty on persons for violating information collection requirements (ICRs) which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new ICRs resulting from this rulemaking action prior to the effective date of the agency's final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

List of Subjects in 49 CFR Part 229

Locomotives, Penalties, Railroad safety, Sanitation.

For the reasons set forth in the preamble, 49 CFR part 229 is amended as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49.

2. Section 229.5 is amended by adding in alphabetical order new definitions of ''Commuter service'', ''Commuter work train'', ''Modesty lock'', ''Other short-haul passenger service'', ''Potable water'', ''Sanitary'', ''Sanitation compartment'', ''Switching service'', ''Toilet facility'', ''Transfer service'', ''Unsanitary'', and ''Washing system'.

§ 229.5 Definitions.

* * * * *

Commuter service means the type of railroad service described under the heading ''Commuter Operations'' in 49 CFR part 209, Appendix A.

* * * * *

Commuter work train is a non-revenue service train used in the administration and upkeep service of the commuter railroad.

* * * * *

Modesty lock means a latch that can be operated in the normal manner only from within the sanitary compartment, that is designed to prevent entry of another person when the sanitary compartment is in use. A modesty lock may be designed to allow deliberate forced entry in the event of an emergency.

* * * * *

Other short-haul passenger service means the type of railroad service described under the heading ''Other short-haul passenger service'' in 49 CFR part 209, Appendix A.

Potable water means water that meets the requirements of 40 CFR part 141, the Environmental Protection Agency's Primary Drinking Water Regulations, or water that has been approved for drinking and washing purposes by the pertinent state or local authority having jurisdiction. For purposes of this section, commercially available, bottled drinking water is deemed potable water.

* * * * *

Sanitary means lacking any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or of strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Sanitation compartment means an enclosed compartment on a railroad locomotive that contains a toilet facility for employee use.

* * * * *

Switching service means the classification of railroad freight and passenger cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement.

Toilet facility means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

Transfer service means a freight train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

Unsanitary means having any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a

reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong persistent chemical or human waste odors in the compartment.

Washing system means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

3. Section 229.9 is amended by adding paragraph (g) to read as follows:

§ 229.9 Movement of non-complying locomotives.

* * * * *

(g) Paragraphs (a), (b), and (c) of this section shall not apply to sanitation conditions covered by §§ 229.137 and 229.139. Sections 229.137 and 229.139 set forth specific requirements for the movement and repair of locomotives with defective sanitation compartments.

4. Section 229.21 is amended by removing the fourth and fifth sentences of paragraph (a) and adding in their place three new sentences and by removing the fourth sentence of paragraph (b) and adding in its place three new sentences to read as follows:

§ 229.21 Daily inspection.

(a) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that do not comply with § 229.137 or § 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137 or § 229.139 may be noted on the report, or in electronic form. * * *

(b) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that do not comply with § 229.137 or § 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137 or § 229.139 may be noted on the report, or in electronic form. * * *

5. Sections 229.137 and 229.139 are added to subpart C to read as follows:

§ 229.137 Sanitation, general requirements.

(a) *Sanitation compartment.* Except as provided in paragraph (b) of this section, all lead locomotives in use shall be equipped with a sanitation compartment. Each sanitation compartment shall be:

(1) Adequately ventilated;

(2) Equipped with a door that:

(i) Closes, and

(ii) Possesses a modesty lock by [18 months after publication of the final rule];

(3) Equipped with a toilet facility, as defined in this part;

(4) Equipped with a washing system, as defined in this part, unless the railroad otherwise provides the washing system to employees upon reporting for duty or occupying the cab for duty, or where the locomotive is equipped with a stationary sink that is located outside of the sanitation compartment;

(5) Equipped with toilet paper in sufficient quantity to meet employee needs, unless the railroad otherwise provides toilet paper to employees upon reporting for duty or occupying the cab for duty; and

(6) Equipped with a trash receptacle, unless the railroad otherwise provides portable trash receptacles to employees upon reporting for duty or occupying the cab for duty.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to:

(i) Locomotives engaged in commuter service or other short-haul passenger service and commuter work trains on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive or elsewhere on the train, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(ii) Locomotives engaged in switching service on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iii) Locomotives engaged in transfer service on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iv) Locomotives of Class III railroads engaged in operations other than switching service or transfer service, that are not equipped with a sanitation compartment as of June 3, 2002. Where an unequipped locomotive of a Class III railroad is engaged in operations other than switching or transfer service, employees shall have ready access to railroad-provided sanitation facilities outside of the locomotive that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift, or the railroad shall arrange for enroute access to such facilities;

(v) Locomotives of tourist, scenic, historic, or excursion railroad operations, which are otherwise covered by this part because they are not propelled by steam power and operate on the general railroad system of transportation, but on which employees have ready access to railroad-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift; and

(vi) Except as provided in § 229.14 of this part, control cab locomotives designed for passenger occupancy and used in intercity push-pull service that are not equipped with sanitation facilities, where employees have ready access to railroad-provided sanitation in other passenger cars on the train at frequent intervals during the course of their work shift.

(2) Paragraph (a)(3) of this section shall not apply to:

(i) Locomotives of a Class I railroad which, prior to [the effective date of this section], were equipped with a toilet facility in which human waste falls via gravity to a holding tank where it is stored and periodically emptied, which does not conform to the definition of toilet facility set forth in this section. For these locomotives, the requirements of this section pertaining to the type of toilet facilities required shall be effective as these toilets become defective or are replaced with conforming units, whichever occurs first. All other requirements set forth in this section shall apply to these locomotives as of June 3, 2002; and

(ii) With respect to the locomotives of a Class I railroad which, prior to June 3, 2002, were equipped with a sanitation system other than the units addressed by paragraph (b)(2)(i) of this section, that contains and removes human waste by a method that does not conform with the definition of toilet facility as set forth in this section, the requirements of this section pertaining to the type of toilet facilities shall apply on locomotives in use on July 1, 2003. However, the Class I railroad subject to this exception shall not deliver locomotives with such sanitation systems to other railroads for use, in the lead position, during the time between June 3, 2002, and July 1, 2003. All other requirements set forth in this section shall apply to the locomotives of this Class I railroad as of June 3, 2002.

(c) *Defective, unsanitary toilet facility; prohibition in lead position.* Except as provided in paragraphs (c)(1) through (5) of this section, if the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad shall not use the locomotive in the lead position. The railroad may continue to use a lead locomotive with a toilet facility that is defective or unsanitary as of the daily inspection only where all of the following conditions are met:

(1) The unsanitary or defective condition is discovered at a location where there are no other suitable locomotives available for use, ie., where it is not possible to switch another locomotive into the lead position, or the location is not equipped to clean the sanitation compartment if unsanitary or repair the toilet facility if defective;

(2) The locomotive, while noncompliant, did not pass through a location where it could have been cleaned if unsanitary, repaired if defective, or switched with another compliant locomotive, since its last daily inspection required by this part;

(3) Upon reasonable request of a locomotive crewmember operating a locomotive with a defective or unsanitary toilet facility, the railroad arranges for access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards;

(4) If the sanitation compartment is unsanitary, the sanitation compartment door shall be closed and adequate ventilation shall be provided in the cab so that it is habitable; and

(5) The locomotive shall not continue in service in the lead position beyond a location where the defective or unsanitary condition can be corrected or replaced with another compliant locomotive, or the next daily inspection required by this part, whichever occurs first.

(d) *Defective, unsanitary toilet facility; use in trailing position.* If the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad may use the locomotive in trailing position. If the railroad places the locomotive in trailing position, they shall not haul employees in the unit unless the sanitation compartment is made sanitary prior to occupancy. If the toilet facility is defective and the unit becomes occupied, the railroad shall clearly mark the defective toilet facility as unavailable for use.

(e) *Defective, sanitary toilet facility; use in switching, transfer service.* If the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective, but sanitary, the railroad may use the locomotive in switching service, as set forth in paragraph (b)(1)(ii) of this section, or in transfer service, as set forth in paragraph (b)(1)(iii) of this section for a period not to exceed 10 days. In this instance, the railroad shall clearly mark the defective toilet facility as unavailable for use. After expiration of the 10-day period, the locomotive shall be repaired or used in the trailing position.

(f) *Lack of toilet paper, washing system, trash receptacle.* If the railroad determines during the daily inspection required by § 229.21 that the lead locomotive is not equipped with toilet paper in sufficient quantity to meet employee needs, or a washing system as required by paragraph (a)(4) of this section, or a trash receptacle as required by paragraph (a)(6) of this section, the locomotive shall be equipped with these items prior to departure.

(g) *Inadequate ventilation.* If the railroad determines during the daily inspection required by § 229.21 that the sanitation compartment of the lead locomotive in use is not adequately ventilated as required by paragraph (a)(1) of this section, the railroad shall repair the ventilation prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer service as set forth in paragraph (b)(1)(iii) of this section.

(h) *Door closure and modesty lock.* If the railroad determines during the daily inspection required by § 229.21 that the sanitation compartment on the lead locomotive is not equipped with a door that closes, as required by paragraph (a)(2)(i) of this section, the railroad shall repair the door prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer service as set forth in paragraph (b)(1)(iii) of this section. If the railroad determines during the daily inspection required by § 229.21 that the modesty lock required by paragraph (a)(2)(ii) of this section is defective, the modesty lock shall be repaired pursuant to the requirements of § 229.139(e).

(i) *Equipped units; retention and maintenance.* Except where a railroad downgrades a locomotive to service in which it will never be occupied, where a locomotive is equipped with a toilet facility as of [the effective date of the final rule], the railroad shall retain and maintain the toilet facility in the locomotive consistent with the requirements of this part, including locomotives used in switching service pursuant to paragraph (b)(1)(ii) of this section, and in transfer service pursuant to paragraph (b)(1)(iii) of this section.

(j) *Newly manufactured units; in-cab facilities.* All locomotives manufactured after June 3, 2002, except switching units built exclusively for switching service and locomotives built exclusively for commuter service, shall be equipped with a sanitation compartment accessible to cab employees without exiting to the out-of-doors for use. No railroad may use a locomotive built after June 3, 2002, that does not comply with this subsection.

(k) *Potable water.* The railroad shall utilize potable water where the washing system includes the use of water.

§ 229.139 Sanitation, servicing requirements.

(a) The sanitation compartment of each lead locomotive in use shall be sanitary.

(b) All components required by § 229.137(a) for the lead locomotive in use shall be present consistent with the requirements of this part, and shall operate as intended such that:

(1) All mechanical systems shall function;

(2) Water shall be present in sufficient quantity to permit flushing;

(3) For those systems that utilize chemicals for treatment, the chemical (chlorine or other comparable oxidizing agent) used to treat waste must be present; and

(4) No blockage is present that prevents waste from evacuating the bowl.

(c) The sanitation compartment of each occupied locomotive used in switching service pursuant to § 229.137(b)(1)(ii), in transfer service pursuant to § 229.137(b)(1)(iii), or in a

trailing position when the locomotive is occupied, shall be sanitary.

(d) Where the railroad uses a locomotive pursuant to § 229.137(e) in switching or transfer service with a defective toilet facility, such use shall not exceed 10 calendar days from the date on which the defective toilet facility became defective. The date on which the toilet facility becomes defective shall be entered on the daily inspection report.

(e) Where it is determined that the modesty lock required by § 229.137(a)(2) is defective, the railroad shall repair the modesty lock on or before the next 92-day inspection required by this part.

6. Appendix B of part 229 is amended by adding entries for §§ 229.137 and 229.139 to the Schedule of Civil Penalties to read as follows:

APPENDIX B TO PART 229.—SCHEDULE OF CIVIL PENALTIES

Section	Violation	Willful violation [1]
* * * * * *		*
Subpart C—Safety Requirements		
* * * * * *		*
229.137 Sanitation, general:		
(a) Sanitation compartment in lead unit, complete failure to provide required items	$5,000	$10,000
(1) Ventilation	2,500	5,000
(2) Door missing	2,000	4,000
(2)(i) Door doesn't close	1,000	2,000
(2)(ii) No modesty lock	1,000	2,000
(3) Not equipped with toilet in lead	5,000	10,000
(4) Not equipped with washing system	1,000	2,000
(5) Lack of paper	1,000	2,000
(6) Lack of trash receptacle	1,000	2,000
(b) Exceptions:		
(1)(i) Commuter service, failure to meet conditions of exception	2,500	5,000
(1)(ii) Switching service, failure to meet conditions of exception	2,500	5,000
(1)(iii) Transfer service, failure to meet conditions of exception	2,500	5,000
(1)(iv) Class III, failure to meet conditions of exception	2,500	5,000
(1)(v) Tourist, failure to meet conditions of exception	2,500	5,000
(1)(vi) Control cab locomotive, failure to meet conditions of exception	2,500	5,000
(2) Noncompliant toilet	5,000	10,000
(c) Defective/unsanitary toilet in lead unit	2,500	5,000
(1–5) Failure to meet conditions of exception	2,500	5,000
(d) Defective/unsanitary unit; failure to meet conditions for trailing position	2,500	5,000
(e) Defective/sanitary unit; failure to meet conditions for switching/transfer service	2,500	5,000
(f) Paper, washing, trash holder; failure to equip prior to departure	2,500	5,000
(g) Inadequate ventilation; failure to repair or move prior to departure	2,500	5,000
(h) Door closure/modesty lock; failure to repair or move	1,000	2,000
(i) Failure to retain/maintain of equipped units	2,500	5,000
(j) Failure to equip new units/in-cab facility	2,500	5,000
(k) Failure to provide potable water	2,500	5,000
229.139 Servicing requirements:		
(a) Lead occupied unit not sanitary	2,500	5,000
(b) Components not present/operating	2,500	5,000
(c) Occupied unit in switching, transfer service, in trailing position not sanitary	2,500	5,000
(d) Defective unit used more than 10 days	2,500	5,000
(e) Failure to repair defective modesty lock	1,000	2,000

* * * * *

Issued in Washington, DC, on March 22, 2002.

Allan Rutter,

Administrator.

[FR Doc. 02–8077 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. NHTSA–2001–11048]

RIN 2127–AI68

Light Truck Average Fuel Economy Standard, Model Year 2004

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in the 2004 model year. Chapter 329 of Title 49 of the United States Code requires the issuance of this standard. The standard for all light trucks manufactured by a manufacturer is set at 20.7 mpg for the 2004 model year.

DATES: The amendment is effective May 6, 2002. Petitions for reconsideration must be submitted within 30 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Office of Planning and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail kkatz@nhtsa.dot.gov. For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

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I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks. Title V has been codified without substantive change as Chapter 329 of Title 49 of the United States Code.

Section 32902(a) of Chapter 329 requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. Standards are required to be set at least 18 months prior to the beginning of the model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 32902(f) of the Act to consider four factors: technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (The Secretary of Transportation delegated responsibility for the automotive fuel economy program to the Administrator of NHTSA (41 FR 25015, June 22, 1976)).

From 1995 until very recently, the standards-setting process for light truck CAFE standards was affected by restrictions imposed in the Department of Transportation's annual Appropriations Acts. These Acts provided that none of the funds were available to prepare, propose, or promulgate any regulations prescribing CAFE standards in any model year that differed from standards previously promulgated. This meant that the agency was unable to spend any funds for the collection and analysis of data relating to CAFE levels. During this time period, the agency established the required light truck CAFE standards at the level of 20.7 mpg, the level of the last light truck CAFE standard it had previously promulgated under the usual statutory criteria. Because we had no other course of action, we determined that issuing notices of proposed rulemaking (NPRMs) during this time period was unnecessary and contrary to the public interest.

On July 10, 2001, U.S. Secretary of Transportation Mineta sent a letter to Congress requesting that the Department be allowed to begin the rulemaking process for future CAFE standards immediately. The restrictions ended with the enactment of the Department of Transportation and Related Agencies Appropriations Act for FY 2002. However, this did not take place until December 18, 2001, a time so close to the April 1, 2002 date by which the MY 2004 light truck CAFE standard must be issued as to preclude the agency from preparing the customary detailed factual and analytical foundation for a CAFE rulemaking.

On January 24, 2002, we published in the **Federal Register** (67 FR 3470) an NPRM to establish the MY 2004 light truck fuel economy standard at 20.7 mpg, the level of the MY 1996–2003 standards. This proposed standard reflected the absence of any current information or analysis regarding the impact of any change in CAFE standards and the capabilities of manufacturers. We nonetheless invited comments on the maximum feasible level of average fuel economy, including comments as to whether motor vehicle manufacturers could, with the limited leadtime available and product plans essentially established, achieve a level higher than 20.7 mpg in MY 2004.

We note that on February 7, 2002, we published in the **Federal Register** (67 FR 5767) a request for comments relating to a variety of issues concerning fuel economy improvements for MY 2005–2010. The purpose of this request is to acquire detailed information to assist the agency in developing a proposal for model years beyond 2004. In that document, we also requested comments concerning the recent National Academy of Sciences (NAS) study on the effectiveness and impact of CAFE standards. Through the request for comments and other means we anticipate preparing the customary detailed factual and analytical foundation for establishing fuel economy standards in future years.

In response to the January 24, 2002 NPRM concerning the MY 2004 light truck CAFE standard, the agency received comments from General Motors (GM), Ford, DaimlerChrysler (DC), the National Automobile Dealers Association (NADA), a number of public interest groups, including Public Citizen, and one religious organization.

II. Summary of Decision

Based on our analysis, we are establishing an average fuel economy standard of 20.7 mpg for MY 2004 light trucks. As we indicated in the NPRM, we were precluded from collecting and analyzing information regarding potential changes in fuel economy standards from 1995 to mid-December 2001. This factor, along with the statutory requirement to issue the 2004 model year standard not less than 18 months before the model year begins, limited the information we were able to gather and the analysis we were able to perform in setting the MY 2004 standard. Additionally, we note that the relatively short leadtime for the 2004 model year precludes significant changes beyond those that manufacturers have already planned.

In evaluating manufacturers' fuel economy capabilities for the 2004 model year, we have been largely restricted to publicly available information, the information contained in the manufacturer comments submitted in

response to the NPRM, and the information contained in comments submitted by other interested parties. As the agency was foreclosed until mid-December 2001 from collecting the detailed information regarding manufacturer capabilities and product capabilities that are required to perform an in-depth analysis of manufacturer capabilities, future product plans, and the measures that can be implemented to improve fuel economy that are normally examined in the process of establishing fuel economy standards, much of our analysis is based on the comments submitted by vehicle manufacturers. Nonetheless, we have analyzed the information available to us and applied the four factors we are required by statute to consider in determining the maximum feasible fuel economy level for the 2004 model year.

III. Comments in Response to the NPRM

NHTSA received approximately 130 public comments in response to the NPRM. Private citizens submitted the overwhelming majority of these comments. As indicated above, Ford, GM, and DC submitted comments. While these manufacturers produce the majority of light trucks sold in the United States, a number of other light truck producers, including Nissan and Toyota, did not submit comments. Similarly, smaller light truck manufacturers, who would also be affected by the 2004 model year standard, did not provide comments. Comments were also received from the National Automobile Dealers Association (NADA), Public Citizen, Frontiers of Freedom (FOF), The Small Business Survival Committee (SBSC) and The Environmental Ministries of Southern California (EMSC).

Most of the commenters supported establishing the 2004 light truck standard at a higher level than the 20.7 mpg level proposed in the NPRM. Individuals submitted the majority of the comments supporting a higher standard. Many of these individual commenters also supported higher CAFE standards for passenger cars as well, advocated a single standard for cars and trucks to close what was commonly referred to as the ''SUV Loophole,'' and cited the existence of hybrid vehicles and other technological developments as evidence that manufacturers can achieve higher light truck CAFE levels. Some of these commenters suggested specific CAFE levels for MY 2004, while others suggested future levels and the timeframe for achieving these levels. Individuals advocating an increase in the standard cited a number of reasons in support of an increase, including environmental, energy and national security concerns. Approximately 15 of the commenters specifically mentioned the events of September 11th and reliance on imported petroleum as support for increasing CAFE levels. Private individuals who did not support an increase in the light truck fuel economy standard indicated their belief that increases in light truck fuel economy would result in decreased safety, reduced utility of light vehicles, a reduced number of available light trucks, and prevent vehicle manufacturers from providing sufficiently powerful vehicles to serve as tow vehicles and work trucks.

Among the trade associations, public interest, and religious groups submitting comments, three—NADA, FOF, and SBSC—agreed with the proposed 2004 standard or advocated a lower standard. The FOF and SBSC cited safety concerns and the economic effects of raising the standard beyond 20.7 mpg as support for not increasing the standard. In addition, FOF stated that Americans living in rural areas have a particular need for sufficiently large and powerful trucks for work, farming and recreation. NADA argued that increasing the standard would also cause economic hardship and would conflict with consumer demand for larger and more powerful vehicles.

Public Citizen and EMSC disagreed with the agency's proposal. EMSC argued that small increases in fuel economy are technologically feasible and desirable. In particular, EMSC argued that hybrid technology used in cars could be applied to light trucks.

Public Citizen argued that the auto industry has the capacity to sell a fleet with an average fuel economy well above the current standard, even within the time constraints imposed by the rulemaking process. In support of this argument, Public Citizen stated that, in July 2000, Ford announced that it planned to improve the average fuel economy of its SUV fleet by 25 percent by 2005. Public Citizen also stated that General Motors and DC echoed that pledge. Assuming that the industry was continuing to adhere to those pledges, Public Citizen stated that manufacturers could comply with a 2004 standard above 20.7 mpg and advocated that the agency set it at 21.5 mpg or, in the alternative, at 20.9 mpg.

Public Citizen stated that certain technological improvements could be made that would improve fuel efficiency. Citing suggestions made by the Union of Concerned Scientists (UCS) in its report ''Drilling in Detroit—Tapping Automaker Ingenuity to Build Safe and Efficient Automobiles,'' Public Citizen argued that drivetrain improvements, reductions in parasitic losses, decreased rolling resistance and other new technologies could be applied to improve efficiency. Even in the short term, according to Public Citizen, small gains could be made if optional equipment was removed from vehicles that are using increasingly efficient engines and transmissions. In addition, although acknowledging that NHTSA had been constrained by Congress in the past, Public Citizen contended that the agency proposal represented an abdication of the agency's statutory duty to set fuel economy standards at the maximum feasible level.

The comments submitted by DC, Ford and GM all supported the agency's proposal. DC stated it agreed that NHTSA did not, in the case of the 2004 light truck standard, have sufficient time to collect and analyze any new data. The company also indicated that the design and configuration of its product line for the 2004 model year could not be modified to add any technologies to improve fuel efficiency. In addition, DC strongly supported extension of the dual-fuel vehicle credit program and noted that the continuation of this program would have an impact on the company's ability to meet the 2004 model year standard. Finally, citing the National Academy of Sciences CAFE report, DC stated that any modifications to the existing standard of 20.7 mpg would have to be based on a realistic assessment of the lead time needed by vehicle manufacturers to institute design changes to improve fuel economy. Given what was described as an inability to accommodate any change in the 2004 light truck fuel economy standard, DC stated that any changes to the light truck CAFE standard would have a severe financial impact and could cause the company to reduce product offerings, close plants, and lay-off workers.

Ford also supported the agency's proposal, arguing that 20.7 mpg is the maximum feasible light truck CAFE standard for the 2004 model year. Ford concurred in NHTSA's assertion that events did not leave the agency in a position to collect and analyze any new data. Moreover, Ford stated that its 2004 product plans are now fixed and that it would be impossible to add any fuel economy related technology to its 2004 vehicles. The company also stated that any increase in CAFE standards for the 2004 model year would degrade Ford's financial health and cause them to reduce product offerings.

GM also stated that it could not achieve a light truck CAFE higher than 20.7 mpg in the 2004 model year. In fact, GM said that it projects that the average fuel economy of its 2004 light truck fleet will be lower than 20.7 mpg, if CAFE credits resulting from its dual fuel vehicles are excluded. It did not, however, quantify the possible shortfall or explain the reasons for it. As is the case with the other manufacturers submitting comments, GM stated that its product lines and final designs for the 2004 model year are already fixed and not susceptible to change. GM also stated that it believed that sufficient time did not exist for NHTSA to gather data and perform analysis sufficient to show that a standard higher than 20.7 mpg is feasible. GM contrasted the limited information in the record for this rulemaking with the extensive information that NHTSA recently requested to aid it in addressing the light truck fuel economy standards for the 2005–2010 model years. (67 FR 5767)

IV. Technological Feasibility

One of the factors that Section 32902(f) directs NHTSA to consider in establishing fuel economy standards is the technological feasibility of the improvements in fuel efficiency that are required for manufacturers to meet that standard. As NHTSA has been foreclosed from collecting detailed information regarding manufacturer capabilities, it may only consider the potential for technological improvements in a general fashion. As a number of commenters have indicated, there are a number of technologies that offer promise for gains in fuel efficiency. These include hybrid-electric drive trains, integrated starter-generators, variable valve timing, improved combustion management, aerodynamic improvements, reductions in friction losses, and advanced transmissions, including continuously variable transmissions (CVT's).

In the absence of detailed information from vehicle manufacturers, including proprietary information that is not otherwise available, the agency is unable to determine which, if any, of these technologies are included in future product plans and either could or would be incorporated in 2004 model year trucks. NHTSA is aware, as Public Citizen pointed out in its comments, that Ford and other manufacturers pledged in 2000 to voluntarily improve SUV fuel efficiency by MY 2005. NHTSA does not know precisely which combination of measures these manufacturers contemplated using to meet this pledge or the degree to which increasing consumer demand for larger, heavier, and more powerful vehicles impacted on any assumptions that these pledges may have been based on. None of those manufacturers discussed the status of the pledges about SUV fuel economy in their comments. However, all of the manufacturers responding to the NPRM indicated that the maximum level of average fuel economy for all of their light trucks, not just their SUVs, for the 2004 model year would be 20.7 mpg.

NHTSA does not possess the information required to analyze or question the assertions made by Ford, DC, and GM that the maximum average fuel economy their light truck fleets can achieve in the 2004 model year is 20.7 mpg. As already noted, NHTSA lacks detailed information on the extent to which the manufacturers are using the various available fuel efficiency improving technologies in their current light truck models and the extent to which they plan to use them in the 2004 model year. Many commenters indicated a belief that manufacturers could achieve a higher level through the implementation of new technologies. However, NHTSA does not have the information necessary to determine if manufacturers can incorporate these technologies into their MY 2004 light trucks given the short leadtime.

In fact, all the manufacturers stated that one constraint on their ability to improve fuel economy was the lack of leadtime for implementing improvements in fuel economy. The agency recognizes, as it has in the past, that the leadtime necessary to design tools and test components to implement a technological advance once the technology is deemed to be feasible is not less than 30 to 36 months (See 59 FR 16313, April 6, 1994). This is further complicated by the long model lives of vehicles in the light truck segment. The lack of available leadtime before the beginning of the 2004 model year indicates that most, if not all, potential improvements in fuel efficiency that are not already designed into 2004 models could not now be used in these vehicles.

Public Citizen also suggested that rather than use improvements in fuel efficiency to decrease fuel consumption, manufacturers have taken the opportunity to increase vehicle weight and content to boost sales and increase profits. If, as Public Citizen suggests, short-term gains in fuel economy could be gained by basing increases in the fuel economy standard on the removal of optional equipment, NHTSA has not had sufficient time or information to assess the feasibility, practicability or effectiveness of such an approach.

V. Effect of Other Federal Standards on Fuel Economy

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability.

A. Safety Standards

1. FMVSS 138

On July 26, 2001, NHTSA published in the **Federal Register** (66 FR 38982) a notice of proposed rulemaking containing a proposal to require tire pressure monitoring systems on passenger cars, multipurpose vehicles, trucks, and buses with a gross vehicle weight rating of 10,000 pounds or less. This proposal was issued in response to a requirement contained in the Transportation Recall Enhancement, Accountability and Documentation Act of 2000 (TREAD). The TREAD Act further requires that the tire pressure monitoring system requirements take effect two years after the final rule is issued. Although NHTSA has not yet issued this final rule, it anticipates doing so in the near future. Therefore, the tire pressure monitoring system requirements will apply to 2004 model year light trucks. In its Preliminary Regulatory Evaluation for the tire pressure monitoring system rulemaking, the agency estimated weight increases per vehicle associated with tire pressure monitoring systems as being not more than one pound. As this weight increase is negligible, the tire pressure monitoring system requirements are not likely to have any CAFE impact.

We note that correct tire pressure improves a vehicle's fuel economy. Thus, the addition of tire pressure monitoring systems will improve real world fuel economy by warning drivers about tires that are significantly underinflated. This will not result in a CAFE improvement for manufacturers, however, as a vehicle's fuel economy for CAFE purposes is determined by a detailed test procedure that includes specifications for tire pressure.

2. FMVSS 201

On April 5, 2000, NHTSA published in the **Federal Register** (65 FR 17482) an NPRM proposing to modify test procedures and to extend the upper interior impact requirements of FMVSS 201 to certain door frames and seat belt mounting structures to passenger car, trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. The agency proposal specified that

the new requirements would become effective 180 days after publication of a final rule. The proposed extension would require that certain vertical surfaces on doors of vehicles with doors that close together without an intervening pillar and vertical seat belt mounting structures meet the same impact requirements applicable to the pillars found on more conventional designs.

The agency has not yet issued a final rule. Comments received in response to the NPRM suggested that the proposed effective date did not provide sufficient leadtime for manufacturers to respond to the new requirements. This request for additional leadtime is presently under consideration by the agency. Although no determination has yet been made regarding this issue, the extension of the impact requirements to door frames and seat belt mounting structures could become effective before or during the 2004 model year. The safety countermeasures required to meet the upper interior impact requirements of FMVSS 201 do not impose a significant weight penalty. The agency's estimate of the additional weight required to meet the requirements of Standard 201 contained in the Final Economic Assessment prepared at the time of the issuance of the final rule establishing the upper interior requirements (60 FR 43031) estimated an increase in total vehicle weight of 2.29 to 5.59 pounds for installation of countermeasures in the entire vehicle. As the proposed extension of these requirements to door frames and seat belt mounting structures applies only to these discrete components rather than the entire upper interior, the weight penalty associated with installing countermeasures on these structures would be less than one pound per vehicle. This added weight will have a minimal impact on vehicle fuel economy.

3. FMVSS 225

On March 5, 1999, NHTSA published in the **Federal Register** (64 FR 10786) a final rule establishing a new safety standard requiring the installation of dedicated child restraint anchorage systems in passenger cars, multipurpose vehicles, and trucks with a GVWR of 8,500 pounds or less and buses with a GVWR of 10,000 pounds or less. On July 31, 2000, NHTSA published a response to petitions for reconsideration of the March 5, 1999 final rule that extended the effective date of the new anchorage requirements to September 1, 2004. Because model years for CAFE purposes begin on October 1, these new requirements would apply to vehicles that must meet the 2004 model year light truck fuel economy standard. The FMVSS 225 requirements are intended to reduce deaths and injuries to children by providing a more effective and standardized means of attaching child restraints. The agency's Final Economic Analysis prepared at the time of the issuance of the March 5, 1999 final rule estimated that compliance with the new child restraint anchorage requirements would result in a weight increase of one pound per vehicle. Accordingly, the agency determined that compliance would have a negligible impact on vehicle fuel economy.

4. FMVSS 139

On March 5, 2002, NHTSA published in the **Federal Register** (67 FR 10050) a notice of proposed rulemaking containing the agency's proposal for a new FMVSS establishing performance requirements for tires. The agency's proposal was issued pursuant to a mandate in the TREAD Act requiring that it issue new performance standards for tires on or before June 1, 2002. These tire performance requirements, which would appear in FMVSS 139 and would apply to new pneumatic tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency's proposal sets forth two alternative phase-in schedules for these new requirements. Under one of these phase-ins, tires on MY 2004 light trucks would have to meet the performance requirements of the standard. The proposed performance requirements for tires could have an impact on fuel economy if meeting the requirements altered the rolling resistance of these tires. However, there is no present indication that the proposed performance requirements will have any such impact. Accordingly, the agency believes that this proposal would have a minimal impact on the ability of manufacturers to comply with the 2004 light truck fuel economy standard.

B. Emissions Standards

1. Tier II Requirements

On February 10, 2000, the Environmental Protection Agency (EPA) published in the **Federal Register** (65 FR 6698) a final rule establishing new federal emissions standards for vehicles classified by EPA as passenger cars, light trucks and larger passenger vehicles. These new emissions standards, known as Tier 2 standards, are designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles. These emissions are nitrogen oxides (NO[X]) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program also applies the same set of federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles. Under the Tier 2 standards, light trucks include ''light light-duty trucks'' (or LLDTs), rated at less than 6000 pounds gross vehicle weight and ''heavy light-duty trucks'' (or HLDTs), rated at more than 6000 pounds gross vehicle weight. For new passenger cars and light LDTs, the Tier 2 standards phase-in beginning in 2004, and are to be fully phased-in by 2007. During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards must meet an interim standard equivalent to the current National Low Emission Vehicle (NLEV) standards for light duty vehicles. In addition to establishing new emissions standards for vehicles, the Tier 2 standards also establish standards for the sulfur content of gasoline.

When issuing the Tier 2 standards, EPA responded to comments regarding the impact of the Tier 2 standard and its impact on CAFE by indicating that it believed that the Tier 2 standards would not have an adverse effect on fuel economy. NHTSA notes that only one of the commenters responding to the agency's proposed 2004 light truck standard indicated that the Tier 2 standards would have any impact on the ability to meet fuel economy standards. DC, while addressing its strong support for continuation of the dual-fuel incentive program, stated that the Tier 2 standards presented special challenges for ethanol-fueled vehicles. The comments, did not, however, indicate the nature of these challenges and the degree to which the Tier 2 standards would impact on DC's ability to meet the proposed 2004 light truck standard.

2. Onboard Vapor Recovery

On April 6, 1994, EPA published in the **Federal Register** a final rule (59 FR 16262) controlling vehicle refueling emissions through the use of onboard refueling vapor recovery (ORVR) vehicle-based systems. These requirements applied to light-duty vehicles beginning in the 1998 model year, and were phased-in over three model years. The ORVR requirements also apply to light-duty trucks with a gross vehicle weight rating of 0–6000 lbs, beginning in model year 2001 and phasing-in over three model years at the same rate as for light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001–8500 lbs, the ORVR requirements first apply in the

2004 model year and phase-in over three model years at the same rate as light-duty vehicles.

None of the commenters addressed the impact, if any, of the ORVR requirements on compliance with CAFE. The ORVR requirements impose a weight penalty on vehicles as they necessitate the installation of vapor recovery canisters and associated tubing and hardware. However, the operation of the ORVR system results in fuel vapors being made available to the engine for combustion while the vehicle is being operated. As these vapors provide an additional source of energy that would otherwise be lost to the atmosphere through evaporation, the ORVR requirements do not have a negative impact on fuel economy.

3. Supplemental Federal Test Procedure

On October 26, 1996, EPA issued a final rule (61 FR 54852) revising the tailpipe emission portions of the Federal Test Procedure (FTP) for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The revision created a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the existing FTP in the representation of aggressive (high speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. The SFTP also contains requirements designed to more accurately reflect real road forces on the test dynamometer. EPA chose to apply the SFTP requirements to trucks through a phase-in. Light-duty trucks with a gross vehicle weight rating (GVWR) up to 6000 lbs were subject to a three-year phase-in ending in the 2002 model year. Heavy light-duty trucks, those with a GVWR greater than 6000 lbs but not greater than 8500 lbs, are subject to a phase-in in which 40 percent of each manufacturer's production must meet the SFTP requirements in the 2002 model year, 80 percent in 2003, and 100 percent in the 2004 model year.

The 2004 model year represents the final phase-in year for light trucks subject to CAFE standards. Neither Ford, GM or DC indicated in their comments that the SFTP would have any impact on their ability to meet the proposed 2004 standard.

4. California Air Resources Board LEV II

The State of California Low Emission Vehicle II regulations (LEV II) will apply to passenger cars and light trucks in the 2004 model year. The LEV II amendments restructure the light-duty truck category so that trucks with a gross vehicle weight rating of 8,500 pounds or lower are subject to the same low-emission vehicle standards as passenger cars. LEV II requirements also include more stringent emission standards for passenger car and light-duty truck LEVs and ultra low emission vehicles (ULEVs), and establish phase-in requirements that begin in 2004. During the initial year of the four-year phase-in, the LEV II standards require that 25 percent of production comply.

Comments submitted by DC indicated that company's concern that compliance with LEV II requirements may be difficult for dual-fuel vehicles. The company, did not, however, provide any details or data regarding these challenges.

5. Section 177 States

The term ''Section 177 States'' refers to states that voluntarily adopt the more stringent California emissions standards. As of November 2000, Massachusetts, New York and Maine had adopted the California Low Emission Vehicle (LEV) program. NHTSA has not received any data showing any impact on the 2004 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

VI. The Need of the Nation To Conserve Energy

Since the petroleum ''shocks'' of the 1970s, the inflation-adjusted price of crude oil has generally declined. After the oil shocks of the 1970s, several events have combined to keep oil prices low, including a diminution in the market power of OPEC due to an increase in petroleum production from non-OPEC nations. However, there also has been a growing dependence of the U.S. on imported petroleum since that time period.

Based on information collected by the Energy Information Administration (EIA) in 2001, world crude oil reserves amount to about 1,000 billion barrels, and world natural gas reserves amount to about 5,180 trillion cubic feet. Of this total, the Middle East controls about 65 percent of the world's oil reserves and about 35 percent of the world's natural gas reserves (the former U.S.S.R. controls another 38 percent of the world's natural gas reserves). North American reserves of oil amount to just 5–6 percent of world reserves, and North American reserves of natural gas amount to about 5 percent of world reserves.

Today, the Persian Gulf region holds about two-thirds of the entire world's known oil reserves. The U.S. imports more than 53 percent of its petroleum—much of it coming from the Persian Gulf region. EIA's Annual Energy Outlook 2002 estimates that this oil importation will increase to 62 percent by the year 2020. EIA projects that Persian Gulf producers are expected to account for more than 45 percent of worldwide trade by 2002, for the first time since the 1980's. After 2002, the Persian Gulf share of worldwide petroleum exports is projected to increase gradually to almost 48 percent by 2020.

VII. Economic Practicability

The agency's traditional interpretation of the requirement to consider ''economic practicability'' in deciding maximum feasible average fuel economy is that the agency must set standards that are within the financial capability of the industry, and not so stringent as to threaten substantial economic hardship for the industry (42 FR 33537). Since GM, Ford and DC, whose production represents over 80 percent of the light truck market, did not object to the setting of the model year 2004 light truck standard at 20.7 mpg, the agency concludes that a standard set at that level would be economically practicable.

GM, Ford and DC indicated that they could not meet any standard higher than 20.7 mpg without suffering economic effects. Unfortunately, due to the unique circumstances of this rulemaking, NHTSA is not now in a position to determine the point at which those economic effects would amount to a substantial economic hardship. In the absence of the information needed to make such a determination, the agency concludes that establishing the standard above 20.7 mpg could create a risk of such substantial hardship.

VIII. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 32902(f) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 32902(f): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of ''Feasible''

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted ''feasible'' to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy

level must: (1) be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industry-wide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. Legislative history may be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of ''maximum feasible average fuel economy level.'' The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer * * *.

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has traditionally set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876, March 31, 1980. However, as the agency noted in deciding not to set the MYs 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599, December 11, 1980.

C. Petroleum Consumption

The potential savings associated with a 2004 light truck standard above 20.7 mpg are highly uncertain. Assuming that a standard could be set at 21.2 mpg, 0.5 mpg above the capability asserted by GM, Ford and DC, these three companies, whose sales represent approximately 80 percent of all the light trucks sold in the United States, could likely meet the level of the standard only by restricting the sales of their larger or more powerful light trucks. If this occurred, consumers might tend to keep their older, less-fuel-efficient light trucks in service longer. Also, consumers might purchase larger, heavier trucks that are not subject to CAFE standards. Therefore, the agency believes that any additional energy savings associated with alternative higher fuel economy standards above 20.7 mpg (the level the agency has determined to be the capability of GM, Ford and DC) for model year 2004 would be uncertain and speculative.

D. The 2004 Model Year Standard

Based on its analysis described above and on manufacturers' projections contained in the comments submitted in response to the January 24, 2002 NPRM, the agency concludes that the major domestic manufacturers can achieve a light truck fuel economy level of 20.7 mpg.

Ford, DC and GM dominate that domestic light truck market with approximately 80 percent of all sales. Other light truck manufacturers, such as Nissan, Toyota, Honda, BMW and others are expected in MY 2004 to have CAFE levels both above and below Ford, DC and GM. However, since these companies have a small market share, NHTSA concludes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industry-wide considerations into account, as required by statute.

Under the time constraints imposed on the agency and the limited amount of information available, NHTSA's analysis of manufacturer capabilities has been truncated. Given these constraints, NHTSA has concluded that it cannot determine which of the manufacturers with a substantial share of sales is the least capable manufacturer for model year 2004. NHTSA concludes that 20.7 mpg is the maximum feasible standard for the 2004 model year. For the reasons discussed below, this level balances the uncertain petroleum savings associated with a higher standard against the relatively certain difficulties of manufacturers facing a higher standard.

A 20.7 mpg standard will not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The comments of GM, DC and Ford all supported setting the 2004 model year light truck CAFE standard at 20.7 mpg. NHTSA believes that the 20.7 mpg standard minimizes the risk of the potentially serious adverse economic consequences for the domestic automobile industry that could result from a higher standard precipitously set on the basis of limited information. The cost of avoiding this risk is, insofar as the 2004 model year is concerned, foregoing any increased petroleum savings that might have been realized from more fuel-efficient light truck production in that model year. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and very uncertain energy savings associated with setting a standard above 20.7 mpg would not justify the potential harm to the industry and the economy as a whole.

FOF and SBSC stated that NHTSA should consider the safety effects of any decision to increase fuel economy standards. Although the agency is not increasing the light truck fuel economy standard for 2004 above the standard for prior years, NHTSA has recognized that CAFE standards could adversely affect safety to the extent that they necessitate significant reductions in car size and/or weight. This issue was discussed at length in the agency's notice terminating rulemaking on the MY 1990 passenger car CAFE standard (see 58 FR 6939, February 3, 1993). As recommended in the NAS report, NHTSA is currently updating its 1997 analysis on the relationship between vehicle size and safety. This study will be completed later this year.

Given that this final rule maintains the light truck CAFE standard at 20.7 mpg, it will not have any impact on safety.

IX. Rulemaking Analyses and Notices

A. Economic Impacts

The Office of Management and Budget reviewed this rule under Executive Order 12866, Regulatory Planning and Review. Although the light truck CAFE standard for MY 2004 does not differ from the fuel economy standards for the preceding model years, we are treating this rule as ''economically significant'' under Executive Order 12866 and ''major'' under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as

added by the Small Business Regulatory Enforcement Fairness Act of 1996. This rule is also considered significant under the Department's regulatory policies and procedures. As noted above, the agency has been operating under a restriction on the use of appropriations for the last six fiscal years. The restriction has prevented the agency from gathering and analyzing data relating to fuel economy capabilities and the costs and benefits of improving the level of fuel economy. Particularly since that restriction was lifted only on December 18, 2001, the agency has been unable to prepare a separate economic analysis for this rulemaking. The agency notes, however, that the standard it is setting for the 2004 model year will not make it necessary for the manufacturers with a substantial share of the market to change their product plans.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. NHTSA is setting the 2004 model year light truck CAFE standard at the same level as the standard applicable to the 1996 through 2003 model years. As this rule maintains the fuel economy standard at the same level as prior years, it does not impose change in any environmental impacts. Accordingly, no environmental assessment is required.

C. Energy Impacts

NHTSA has not changed the level of the light truck CAFE standards in setting the standard for the 2004 model year. This final rule, which maintains the CAFE standard at its existing level, does not have ''a significant adverse effect on the supply, distribution, or use of energy,'' as defined by Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. At this point, therefore, this action is not a ''significant energy action'' under Executive Order 13211 and no ''Statement of Energy Effects'' is required.

D. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the rule are classified as a ''small business'' under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this final rule regarding the corporate average fuel economy of light trucks will not have a significant economic impact on a substantial number of small entities.

E. Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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 E.O. 13132, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final 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 E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. For the same reasons discussed in the section above on economic impacts, the agency has been unable to prepare a separate assessment.

G. Paperwork Reduction Act

There are no information collection requirements in this rule.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has

reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting a fuel economy standard for light trucks.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, i.e., ones regarding the maximum feasible level of corporate average fuel economy for MY 2004 light trucks. Therefore, this rule is not based on any voluntary consensus standards.

L. Department of Energy Review

In accordance with 49 U.S.C. § 32902(j), we submitted this rule to the Department of Energy for review. That Department did not make any comments that we have not responded to.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model Year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7
2003	20.7
2004	20.7

* * * * *

Issued on: March 29, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–8122 Filed 4–1–02; 11:31 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 67, No. 65
Thursday, April 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 710

RIN 1992–AA30

Eligibility for Security Police Officer Positions in the Personnel Security Assurance Program

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations to allow newly hired individuals in security police officer (SPO) positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization Program (AAAP) to be eligible to hold a Personnel Security Assurance Program (PSAP) position. Currently, DOE's regulations require a Q access authorization based upon a full background investigation for all PSAP positions. The events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important. Our activities will need to increase the size of their protective forces, and use of the AAAP will enable them to do so in a timely manner.

DATES: Written comments must be received on or before May 6, 2002.

ADDRESSES: Comments (3 copies) should be addressed to: Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO–112, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Linda Repass, Personnel Security Assurance Program Manager, Security Policy Staff, Office of Security, Department of Energy, SO–112, 1000 Independence Ave., SW., Washington, DC 20585, 301–903–4800.

SUPPLEMENTARY INFORMATION:

I. Background and Explanation of Proposal

The Personnel Security Assurance Program (PSAP) is a special access authorization program, established by DOE pursuant to the Atomic Energy Act of 1954, to assure the reliability of individuals whose positions: (1) Afford direct access to Category I quantities of special nuclear material (including guarding and transporting special nuclear material), (2) are identified as nuclear material production reactor operators, or (3) have the potential for causing unacceptable damage to national security. The PSAP regulations are at 10 CFR part 710, subpart B and currently require an employee or applicant for any PSAP position to have a Q access authorization based upon a full background investigation before being granted a PSAP access authorization. 10 CFR 710.60(c).

This proposed rule would amend 10 CFR 710.60 to permit security police officers (SPOs) to be eligible for a PSAP access authorization based on an interim access authorization obtained through the Department's Accelerated Access Authorization Program (AAAP). A definition of the term ''Accelerated Access Authorization Program'' is proposed to be added to section 710.54 of the PSAP regulations. The proposed rule would permit newly hired SPOs who obtain interim access authorization through the AAAP to assume their PSAP duties before completion of the ongoing full background investigation. If the proposed rule is adopted, newly hired SPOs who obtain an interim access authorization through the AAAP and successfully complete the PSAP requirements will be able to assume their PSAP duties immediately upon completing the 9-week basic SPO training course.

The AAAP was implemented to assist DOE managers and DOE contractors who request interim access authorization for individuals pursuant to DOE Order 472.1, DOE Order 5631.2C (Chapters I–IX), and related DOE directives. Entry into the AAAP is voluntary and written consent of the employee or applicant is required.

The events of September 11, 2001, have made use of the AAAP to expedite SPO screening vitally important. Our activities will need to increase the size of their protective forces, and use of the AAAP will enable them to do so in a timely manner.

The AAAP includes the following screening elements:

(1) Testing for the use of illegal drugs in accordance with the provisions of DOE directives implementing Executive Order 12564 or, for contractor employees, the provisions of 10 CFR part 707, ''Workplace Substance Abuse Programs at DOE Sites'';

(2) Completion of a National Agency Check; for contractor employees, this includes checks of Office of Personnel Management security indices, Department of Defense clearance indices, Federal Bureau of Investigation name and fingerprint indices, and Credit Bureau files, and for Federal employees, the National Agency Check also includes written inquiries to past employers, references given by the individual, and any educational institutions attended recently;

(3) A psychological assessment using a standard psychological screening test to determine if the individual has any psychological/behavioral condition which might call into question the individual's reliability, judgment, and trustworthiness;

(4) A controlled counterintelligence-scope polygraph examination in accordance with 10 CFR part 709; and

(5) Review of the applicant's completed ''Questionnaire for National Security Positions'' (Standard Form 86).

With the exception of the AAAP-specific psychological/behavioral evaluation, the AAAP screening elements are required elements for anyone in a PSAP position. Thus, the proposed rule change would enhance the ability for SPOs who have completed their required training and received an interim access authorization to assume PSAP duties prior to completion of their background investigation. Due to the controlled nature and continuous oversight of SPO positions, there is no appreciable risk to allowing assumption of PSAP duties by SPOs prior to completion and adjudication of the background investigation.

II. Regulatory and Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order

12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule would not directly regulate small businesses or other small entities. It would apply only to individuals who apply for SPO positions at sites owned or operated by DOE or DOE contractors. DOE management and operating contractors are not small businesses. Accordingly, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. DOE has not prepared a regulatory flexibility analysis for this rulemaking.

D. Review Under the Paperwork Reduction Act

No new collection of information would be imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule would amend DOE's regulations governing access to PSAP and would not change the environmental effect of the PSAP regulations. Therefore, this rulemaking is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) requires agencies 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.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's proposed rule and determined that 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. No further action is required by the Executive Order.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. This proposed rule does not contain any federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For

any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, or use.

Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

III. Opportunity for Public Comment

Interested persons are invited to participate by submitting data, views or arguments with respect to the rule amendment proposed in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of a final rule. Any information of data that the submitter considers to be exempt from public disclosure by law must be so identified and submitted in writing (one copy), as well as one complete copy from which the information believed to be exempt from disclosure is deleted. DOE will determine if the information or data is exempt from disclosure.

DOE has not scheduled a public hearing to receive oral presentations of views, data and arguments because DOE does not believe the proposed rule presents a substantial issue of fact or law or that the proposed rule would likely have a substantial impact on the Nation's economy or large numbers of individuals or businesses. DOE will reconsider this matter if public comments show that such issues or potential impacts exist.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials, Revocation, Security measures, Suspension.

Issued in Washington, on March 22, 2002.

Spencer Abraham,

Secretary.

For the reasons set forth in the preamble, Part 710 of Chapter III of Title 10, Code of Federal Regulations is proposed to be amended, as set forth below:

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: 42 U.S.C. 2165; 2201; 5815; 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV.

2. Section 710.54 of subpart B is amended by adding, in alphabetical order, the definition of ''Accelerated Access Authorization Program'' to read as follows:

§ 710.54 Definitions.

* * * * *

Accelerated Access Authorization Program means the DOE program for granting interim access to classified matter and special nuclear material based on a drug test, a National Agency Check, a psychological assessment, a counterintelligence-scope polygraph examination in accordance with 10 CFR part 709, and a review of the applicant's completed ''Questionnaire for National Security Positions.'' (Standard Form 86).

* * * * *

3. Section 710.60 of subpart B is amended by revising paragraph (c) to read as follows:

§ 710.60 DOE security review and clearance determination.

* * * * *

(c) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires the applicant or employee to have a DOE Q access authorization based upon a background investigation, except for Security Police Officers who may be granted PSAP access authorization based on an interim Q access authorization obtained through the Accelerated Access Authorization Program. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation (or Accelerated Access Authorization Program screening elements in the case of Security Police Officers) and the information provided by management and medical sources.

* * * * *

[FR Doc. 02–8134 Filed 4–3–02; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule; Rule for Bearings, Plain, Unmounted and Bearings, Mounted; Notice of Intent

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive.

SUMMARY: The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for bearings, plain, unmounted and bearings, mounted. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice of intent is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before April 15, 2002.

ADDRESSES: 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) 205–7280.

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 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 at 13 CFR 121.906(b) and 121.1106(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 established by the Federal Procurement Data System.

This notice of intent proposes to waive the Nonmanufacturer Rule for bearings, plain, unmounted and bearings unmounted, North American Industry Classification System (NAICS)333613, public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for bearings, plain, unmounted and bearings, mounted, 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 FedBizOpps. 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.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 02–7958 Filed 4–3–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–367–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that currently requires repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. This action would limit the applicability of the existing requirements, clarify certain existing requirements, and require removal of the clamp shell installed previously and replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. Such replacement would end the requirement for repetitive inspections. This action is necessary to prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–367–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–367–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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Douglas Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

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–367–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–367–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 28, 1999, the FAA issued AD 99–03–08, amendment 39–11022 (64 FR 5590, February 4, 1999), applicable to certain Boeing Model 737–600, –700, –700IGW, and –800 series airplanes, to require repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp

shell on the coupling to prevent separation of the coupling halves. That action was prompted by a report that a quick-disconnect coupling on the fuel hose on an in-service airplane was found loose and leaking fuel. The requirements of that AD are intended to detect and correct excessive wear of the quick-disconnect coupling on the fuel hose, which could result in major fuel leakage, fire in the engine nacelle, and consequent loss of thrust from the affected engine.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–03–08, the FAA specified that the actions required by that AD were considered ''interim action'' and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

AD 99–03–08 refers to the original issue of Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, as the appropriate source of service information for required actions. Subsequent to the issuance of AD 99–03–08, the FAA reviewed and approved Boeing Alert Service Bulletin 737–73A1011, Revision 1, dated April 15, 1999. That alert service bulletin divides the list of affected airplanes into Group I (those airplanes on which the clamp shell was *not* installed on the quick disconnect coupling during production) and Group II (those airplanes on which the clamp shell was installed on the quick disconnect coupling during production).

The FAA now has reviewed and approved Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000. In addition to procedures similar to those contained in the original issue (and Revision 1) of the alert service bulletin, Revision 2 of the alert service bulletin describes procedures for replacement of the existing quick-disconnect fuel supply hose, coupling, and strut fitting with new, fixed-B-nut-type parts. The procedures include removing the clamp shell installed on the quick-disconnect coupling on the fuel hose per the requirements of the existing AD (for Group I airplanes) or during production (for Group II airplanes). This replacement eliminates the need for repetitive inspections for discrepancies of the quick-disconnect coupling on the fuel hose. Accomplishment of the actions specified in Revision 2 of the alert service bulletin is intended to adequately address the identified unsafe condition.

The effectivity listing of Revision 2 of the alert service bulletin has also been revised to list only airplanes up to and including line number 560. Airplanes with line number 561 and subsequent have had the new fuel supply hose, coupling, and strut fitting installed during production.

Explanation of Change in Applicability

AD 99–03–08 applies to Boeing Model 737–600, –700, –700IGW, and –800 series airplanes. This proposed AD would apply to certain Boeing Model 737–600, –700, and –800 series airplanes, as listed in Revision 2 of the alert service bulletin, described previously. We have determined that no model designated ''737–700IGW'' is listed on the type certificate for Model 737 series airplanes, and the reference to such a model in the existing AD was inadvertent. For the purposes of this AD, we consider such airplanes, which are in an increased-gross-weight configuration, to be Model 737–700 series airplanes; thus it is not necessary to refer to them separately. Note 1 of this proposed AD clarifies that these airplanes would be subject to this proposed AD.

Explanation of Other Changes to the Requirements of the Existing AD

The FAA has clarified the inspection requirement contained in paragraph (a) of AD 99–03–08. Whereas that AD specifies a visual inspection, the FAA has revised paragraph (a) of this proposed AD to clarify that its intent is to require a general visual inspection. Note 3 of this proposed AD defines that inspection.

Paragraph (b) of AD 99–03–08 requires installation of a certain clamp shell on the quick-disconnect coupling on the fuel hose, and repetitive inspections to detect discrepancies of the quick-disconnect coupling. Because AD 99–03–08 applies to all Boeing Model 737–600, –700, and –800 series airplanes, all of these airplanes are currently subject to the requirements of paragraph (b) of that AD. However, certain Model 737–600, –700, and –800 series airplanes were delivered with the clamp shell already installed. (As stated previously, these airplanes are identified as Group II in Revision 2 of the alert service bulletin.) Thus, only the repetitive inspections required by paragraph (b) of AD 99–03–08 are necessary for Group II airplanes. Therefore, to ease the administrative burden of this proposed AD for operators of the Group II airplanes, the FAA has revised paragraphs (a) and (b) of this proposed AD to apply only to Group 1 airplanes, as listed in Revision 2 of the alert service bulletin. Further, for clarification, the repetitive inspections required by paragraph (b) of AD 99–03–08 have been moved to paragraph (c) of this proposed AD, and the corrective actions in paragraphs (b)(1) and (b)(2) of AD 99–03–08 have been redesignated as paragraphs (c)(1) and (c)(2) of this proposed AD. Also, a new Note 5 has been included in this proposed AD to clarify that the inspections in paragraph (c) of this AD are the same as those required by paragraph (b) of AD 99–03–08.

Paragraph (b)(2) of AD 99–03–08 identifies Table 1. of the alert service bulletin as the appropriate source of service information for corrective actions if any discrepancy is found during the repetitive inspections. The FAA has determined that Figures 1 and 3 of the alert service bulletin are more comprehensive sources of service information for corrective actions if any discrepancy is found during the repetitive inspections following installation of the clamp shell kit. Therefore, for clarification, we have revised paragraph (c)(2) of this proposed AD (which, as discussed previously, was designated paragraph (b)(2) in AD 99–03–08) to refer to Figures 1 and 3 of the alert service bulletin, as applicable, as the appropriate sources of service information for necessary corrective action.

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 supersede AD 99–03–08 to continue to require repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. The proposed AD would limit the applicability of the existing requirements, clarify certain existing requirements, and require accomplishment of the actions in Revision 2 of the alert service bulletin, described previously.

Cost Impact

There are approximately 560 airplanes of the affected design in the worldwide fleet. The FAA estimates that 271 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 99–03–08 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $16,260, or $60 per airplane, per inspection cycle.

For airplanes on which it has not already been accomplished during production, the installation of a clamp shell required by AD 99–03–08 takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the currently required installation is estimated to be $120 per airplane.

The new replacement that is proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $65,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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 removing amendment 39–11022 (64 FR 5590, February 4, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–367–AD. Supersedes AD 99–03–08, Amendment 39–11022.

Applicability: Model 737–600, –700, and –800 series airplanes, listed in Group 1 or 2 of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000; certificated in any category.

Note 1: This AD applies to Model 737–700 series airplanes in an increased-gross-weight configuration, as listed in the service bulletin referred to in the applicability statement of this AD.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent major fuel leakage due to excessive wear of the quick-disconnect coupling on the fuel hose, fire in the engine nacelle, and consequent loss of thrust from the affected engine, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 99–03–08

Repetitive Inspections and Corrective Actions

(a) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 7 days after February 19, 1999 (the effective date of AD 99–03–08, amendment 39–11022), perform a general visual inspection to detect discrepancies (*i.e.,* fuel leakage, wear of the lock teeth, or missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the installation required by paragraph (b) of this AD is accomplished.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with TABLE 1. of the Accomplishment Instructions of the alert service bulletin, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

Installation of Clamp Shell and Repetitive Inspections

(b) For airplanes listed in Group I of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 30 days after February 19, 1999, install an Aeroquip Clamp Shell, having part number (P/N) AE20074–165, on the quick-disconnect coupling on the fuel hose, which is located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998; or Revision 2, dated July 13, 2000. Accomplishment of such installation terminates the repetitive inspection requirements of paragraphs (a)(1) and (a)(2) of this AD.

New Requirements of This AD

Note 3: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 4: Accomplishment of the requirements of paragraphs (a), (b), and (c) of

this AD according to Boeing Alert Service Bulletin 737–73A1011, Revision 1, dated April 15, 1999, is acceptable for compliance with those paragraphs.

Repetitive Inspections

(c) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 1,000 flight hours after installation of the clamp shell either per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), perform the inspection specified in paragraph (a) of this AD.

Note 5: The repetitive inspections required by paragraph (c) of this AD were previously required by paragraph (b) of AD 99–03–08.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with Figures 1 and 3 of the Accomplishment Instructions of the alert service bulletin, as applicable, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

Replacement of Existing Parts

(d) For airplanes listed in Groups I and II of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000: Within 3 years after the effective date of this AD, remove the clamp shell installed per paragraph (b) of this AD (for Group I airplanes) or during production (for Group II airplanes), and replace the existing quick-disconnect fuel hose, coupling, and strut fitting with new, fixed-B-nut-type parts, in accordance with Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000. Such replacement terminates the repetitive inspections required by paragraphs (a)(1), (a)(2), and (c) of this AD, as applicable.

Spares

(e) After the effective date of this AD, no one may install a quick-disconnect fuel supply hose, coupling, or strut fitting with a part number listed in the ''Existing Part Number'' column of the table under paragraph 2.E. of Boeing Alert Service Bulletin 737–73A1011, Revision 2, dated July 13, 2000, on any airplane.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle 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, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–03–08, amendment 39–11022, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8111 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–346–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 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 Bombardier Model CL–600–2B19 series airplanes. This proposal would require inspection of certain installed electrical relays to determine whether they have certain manufacturing date codes, and replacement of the electrical relays with those date codes with new relays with different manufacturing date codes. This action is necessary to prevent the failure of an electrical relay due to a defective moving blade assembly, which could result in the inability to generate electrical power from the emergency system, if needed. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–346–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. 2001–NM–346–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

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 2001–NM–346–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. 2001–NM–346–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that certain Leach ''H'' series electrical relays having part number (P/N) H–A4A–039 may have defective moving blade assemblies due to improper heat treatment. These defective Leach ''H'' series relays were manufactured between March 12, 2000, and December 10, 2000, and have manufacturing date codes from 0011 to 0050. These relays were not installed in airplanes having line numbers 7003–7067 inclusive and 7069–7373 inclusive at the time of delivery. However, if any of the airplanes with those line numbers have had an original relay replaced after March 1, 2000, it is possible that the replacement relay was defective. According to Leach International, relays with the defective moving blade assemblies failed within the first 500 flight cycles. This action is necessary to prevent the failure of an electrical relay due to a defective moving blade assembly, which could result in the inability to generate electrical power from the emergency system, if needed.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–24–105, Revision ''A'', dated July 20, 2001, which describes procedures for inspection of Leach ''H'' series relays having part number (P/N) H–A4A–039 to determine the manufacturing date code. The service bulletin also describes procedures for replacement of those Leach ''H'' series relays having manufacturing date codes 0011 through 0050 with new Leach ''H'' series relays having the same part number but different manufacturing date codes.

The affected relays—called ''suspect relays'' in the service bulletin—are the following:

- The air-driven generator (ADG) emergency hydraulic power transfer relay (K1XC),
- The ADG emergency electrical power transfer relay (K2XD), and
- The alternating current (AC) essential power transfer relay (K3XD).

TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–27, dated July 24, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences between the Service Bulletin and this AD

The service bulletin recommends that the visual inspection for suspect relays be conducted in conjunction with replacement of any suspect relays. However, this AD would require an inspection for suspect relays within 14 days after the effective date of the AD. The replacement of any suspect relays detected would not be required until the passage of 500 or 1,000 flight hours after the effective date of the AD, depending upon the relay.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $9,600, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement of suspect relay K1XC at an average labor rate of $60 per work hour. There would be no charge for the replacement part. Based on these figures, the cost impact of the proposed replacement of suspect relay K1XC on U.S. operators is estimated to be a maximum of $19,200, or $120 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement of suspect relays K2XD and K3XD at an average labor rate of $60 per work hour. There would be no charge for the replacement parts. Based on these figures, the cost impact of the proposed replacement of suspect relays D or K3XD on U.S. operators is estimated to be a maximum of $19,200, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–346–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7495 inclusive, 7497 through 7502 inclusive, and 7505 through 7507 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of an electrical relay due to a defective moving blade assembly, which could result in the inability to generate electrical power from the emergency system, if needed, accomplish the following:

Inspection

(a) Within 14 days after the effective date of this AD: Perform an inspection to determine whether installed Leach ''H'' series power transfer relays K1XC, K2XD, and K3XD, all having part number (P/N) H–A4A–039, have a manufacturing date code of 0011 through 0050. The inspection for such ''suspect relays'' is to be performed in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision ''A'', dated July 20, 2001.

Note 2: Inspections accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, are considered acceptable for compliance with the applicable action specified in this amendment.

(b) As of the effective date of this AD: For airplanes determined to have suspect Leach ''H'' series relays K1XC or K2XD installed, dispatch with an inoperative integrated-drive generator (IDG) or auxiliary power unit (APU) is prohibited until replacement of the relay with a new relay is accomplished in accordance with paragraphs (c) and (d) of this AD.

Replacement

(c) Within 500 flight hours after the effective date of this AD: Replace suspect relay K1XC with a new relay having a manufacturing date code other than 0011 through 0050, in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision ''A'', dated July 20, 2001.

Note 3: Replacement of suspect relay K1XC accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, is considered acceptable for compliance with the applicable action specified in this amendment.

(d) Within 1,000 flight hours after the effective date of this AD: Replace suspect relays K2XD and K3XD with new relays having a manufacturing date code other then 0011 through 0050, in accordance with Bombardier Alert Service Bulletin A601R–24–105, Revision ''A'', dated July 20, 2001.

Note 4: Replacement of suspect relays K2XD and K3XD accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–24–105, dated July 4, 2001, is considered acceptable for compliance with the applicable action specified in this amendment.

Spares

(e) As of the effective date of this AD, no person shall install a Leach ''H'' series electrical relay having P/N H–A4A–039 that has a manufacturing date code of 0011 through 0050 on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York 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, New York ACO.

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

Special Flight Permits

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

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–27, dated July 24, 2001.

Issued in Renton, Washington, on March 29, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8174 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5B and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5B and –7B series turbofan engines. This proposal would require retirement of stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this proposed AD, from service before accumulating 25,000 cycles-since-new (CSN), or by October 31, 2008, whichever occurs earlier. This proposal would also require installation of new design (either new or reworked) nozzle segments, that would aid in containment of the LPT rotor in the event of LPT shaft failure. This proposal is prompted by a report of an LPT shaft failure caused by a hydromechanical unit (HMU) malfunction that induced a higher than anticipated LPT rotor overspeed. The actions specified by the proposed AD are intended to aid in containment of the LPT rotor in the event of LPT shaft failure, which could result in uncontained engine failure and damage to the airplane.

DATES: Comments must be received by June 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments

may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. 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.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816. This information may be examined, by appointment, 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, 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 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.

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 2001–NE–37–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. 2001–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 7, 2001, the FAA received a report of a CFM56–7B turbofan engine LPT shaft failure. CFMI determined that this failure was caused by an HMU malfunction that induced an LPT rotor overspeed. To aid in containment of the LPT rotor in the event of LPT shaft failure, the FAA proposes to require:

- Retirement of stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this proposed AD, from service before accumulating 25,000 CSN, or by October 31, 2008, whichever occurs earlier. These limits are based on manufacturer's analysis.
- Installation of new design (either new or reworked) nozzle segments, that facilitate the axial clashing between the stage 3 LPT blades and stage 4 nozzle airfoils.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other CFM International (CFMI) CFM56–5B and –7B series turbofan engines of the same type design, the proposed AD would require retirement of stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this proposed AD, from service before accumulating 25,000 cycles-since-new, or by October 31, 2008, whichever occurs earlier. The proposed AD would also require installation of new design (either new or reworked) nozzle segments, that would aid in containment of the LPT rotor in the event of LPT shaft failure.

Economic Analysis

There are approximately 3,187 CFM International (CFMI) CFM56–5B and –7B series engines of the affected design in the worldwide fleet. The FAA estimates that 910 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 10 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $34,984 per engine. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $32,381,440.

Regulatory Analysis

This proposed rule 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 proposed rule.

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:

CFM International: Docket No. 2001–NE–37–AD.

Applicability

This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5B and –7B series turbofan engines. These engines are installed on, but not limited to Boeing 737–600, –700, –800, and –900; and Airbus A319, A320, and A321 airplanes.

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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required before accumulating 25,000 cycles-since-new on the parts listed in Table 1 of this AD, or by October 31, 2008, whichever occurs earlier, unless already done.

To aid in containment of the LPT rotor in the event of LPT shaft failure, which could result in uncontained engine failure and damage to the airplane, do the following:

(a) Retire from service stage 2 LPT nozzle segments and stage 3 LPT nozzle segments listed in the following Table 1, and install new design (either new or reworked) nozzle segments:

TABLE 1.—STAGE 2 AND STAGE 3 LPT NOZZLE SEGMENT PART NUMBERS TO BE RETIRED

Nozzle segments	Part numbers
(1) Stage 2	338–109–104–0, 338–109–105–0, 338–109–106–0, 338–109–204–0, 338–109–205–0, 338–109–206–0, 338–109–304–0, 338–109–305–0, 338–109–306–0.
(2) Stage 3	338–109–702–0, 338–109–802–0.

(b) Information on reworking stage 2 LPT nozzle segments and stage 3 LPT nozzle segments, listed in Table 1 of this AD, can be found in CFM International Service Bulletins (SB's) 720328, dated May 25, 2000, for CFM56–5 series engines, and SB 720241, dated May 25, 2000, for CFM56–7 series engines.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must 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

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

Issued in Burlington, Massachusetts, on March 29, 2002.

Robert G. Mann,

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

[FR Doc. 02–8173 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM02–7–000]

Accounting and Reporting of Asset Retirement Obligations

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of informal technical conference, agenda and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) previously issued a Notice of Informal Technical Conference on March 8, 2002. Today's notice announces that the technical conference will be held on Tuesday, May 7, 2002, starting at 9 A.M., in the Commission's Meeting Room, 888 First Street, NE., Washington, DC. The Conference will address the financial accounting, reporting and related ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. This notice provides the format for the conference, the agenda and requests for comments and provides further details regarding the technical conference. All interested parties are invited to attend.

DATES: Written comments should be submitted on or before April 29, 2002 in the above-captioned proceeding.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The 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's web site at *http://www.ferc.gov/* and click on ''Make an Electronic Filing,'' and follow the instructions for each screen.

FOR FURTHER INFORMATION CONTACT: Mark Klose (Project Manager), Office of Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 219–2595; Fax: (202) 219–2632; E-Mail; *mark.klose@ferc.gov.*

Raymond Reid (Technical Issues), Office of Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 219–2928; Fax: (202) 219–2632; E-Mail; *raymond.reid@ferc.gov.*

Julia Lake (Legal Issues), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Phone (202) 208–2019; E-Mail; *julia.lake@ferc.gov.*

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, it is available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426, during regular business hours and is posted on both the Commission's Issuance Posting System (CIPS) and the Records and Information Management Systems (RIMS), and may be viewed and printed remotely via the Internet through Commission's Home Page (*http://www.ferc.gov*).

Notice of Informal Technical Conference, Agenda and Request for Comments

March 29, 2002.

Take notice that on Tuesday, May 7, 2002,[1] the Commission staff will hold a technical conference to discuss the financial accounting, reporting and ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. The conference will begin at 9:00 A.M. and is scheduled for the Commission Meeting Room, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested parties are invited to attend. This conference is being convened to enlist the participation of CPA firms, industry associations, jurisdictional entities, state commissions, other regulatory bodies, rural electric cooperatives[2] and other

[1] *See* 67 FR 11954 (Mar. 18, 2002). The initial notice indicated that the technical conference would be held on, Tuesday and Wednesday, May 7 and 8, 2002. However, Commission has decided at this time not to extend the technical conference to Wednesday, May 8, 2002.

[2] The Rural Utilities Service (RUS) and its rural electric cooperatives have an interest in this proceeding because RUS's Uniform System of Accounts for its rural electric cooperative utilities incorporates accounting requirements which are similar to the Commission's uniform System of Accounts for public utilities 18 CFR Part 101.

interested parties to address the financial accounting, reporting and ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets.

This notice provides the format for the technical conference, the agenda, a request for comments and further details regarding the technical conference. Panels that have been formed are shown in Attachment 1. Attachment 2 are questions that can be addressed in written comments.

The Commission staff will discuss with the panelist the following topics:

1. The types of fixed assets that have an asset retirement obligation that would be recognized and measured under such a requirement.

2. The impact asset retirement obligations have on depreciation accounting and depreciation procedures.

3. The accounting implementation issues related to the recognition of asset retirement obligations for existing and future long-lived assets.

4. The impact on the Uniform Systems of Accounts and the Commission's rate regulations.

The Commission's existing Uniform Systems of Accounts [3] do not address the accounting and reporting of the asset retirement obligations.[4] There are a number of implementation issues related to the accounting requirements for asset retirement obligations that are capable of different interpretations. These interpretations could result in inconsistent accounting treatment between companies, and have unintended effects on cost-of-service and formula rates. The main purpose for convening this technical conference is to afford an opportunity for the electric, natural gas and oil pipeline industries and other interested parties to discuss with the Commission staff issues related to the implementation of accounting requirements for asset retirement obligations. The goal of the conference is to identify how recognition of asset retirement obligations may affect the Commission's existing accounting and rate regulations.

In order to aid Commission staff's evaluation of the accounting, reporting and ratemaking implications of recognizing asset retirement obligations, we invite all interested parties to submit written comments to the questions in Attachment 2 on or before April 29, 2002, in the above-captioned proceeding. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at (202) 208–2222, or by e-mail to rimsmaster@ferc.gov.

Comments related to this proceeding may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM02–7–000. Comments filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the comments, access the Commission's website at www.ferc.gov and click on ''Make an Electronic Filing,'' and follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filing is available at (202) 208–0258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

The conference will be transcribed. Those interested in obtaining transcripts need to contact ACE Federal Reporters, at (202) 347–3700 or (800) 336–6646. Transcriptions will be placed in the public record ten days after the conference.

For further information contact about the conference, please contact either: Mark Klose (Project Manager), at (202) 219–2595 or *mark.klose@ferc.gov,* Raymond Reid (Technical Issues), at (202) 219–2928 or *raymond.reid@ferc.gov* or Julia Lake (Legal Issues), at (202) 208–2019 or *julia.lake@ferc.gov.*

Linwood A. Watson, Jr.,

Deputy Secretary.

Attachment 1; Accounting and Rate Treatment for Asset Retirement Obligations

Conference Agenda

Tuesday, May 7, 2002.

Opening Remarks 9 a.m–9:15 a.m.
FERC Staff
Panel 1 9:15 a.m. –10:45 a.m.
CPA Firms
Break 10:45 a.m.–11 a.m.
Panel 2 11 a.m.–12:30 p.m.
Edison Electric Institute
Interstate Natural Gas Association of America
Association of Oil Pipelines
Public Utilities and Licensees
Natural Gas Pipelines
Oil Pipelines
Lunch break 12:30 p.m.–1:30 p.m.
Panel 3 1:30 p.m.–3 p.m.
National Association of Regulatory Commissioners
Rural Utilities Services
National Rural Electric Cooperative Association
Rural Electric Cooperatives
Break 3 p.m.–3:15 p.m.
Panel 4 3:15 p.m.–4 p.m.
Other Parties

* * * * *

Attachment 2; Questions To Be Addressed in Request for Comments

In order to aid Commission staff's evaluation of the accounting, reporting and ratemaking implications related to recognizing asset retirement obligations, we invite interested parties to submit written comments on the following questions and any other questions which will aid the Commission staff in assessing the implications of recognizing asset retirement obligations for regulatory purposes.

1. Should legal obligations related to asset retirement obligations be recognized in Commission Annual Reports, FERC Forms 1, 1–F, 2, 2–A, and 6? [5] If not, what is the authoritative support for this position? Please explain.

2. If legal obligations related to asset retirements should be recognized for regulatory financial accounting and reporting purposes, should they be recognized on the same basis and in the same manner as required for external and Securities and Exchange Commission financial reporting? If not, please explain the reasons for any different accounting treatment?

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[3] *See* 18 CFR Part 101 (2001), Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act; 18 CFR Part 201 (2001), Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act; and 18 CFR Part 352 (2001), Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act.

[4] The Commission's Chief Accountant issued interim accounting guidance stating that public utilities and licensees, natural gas companies, and oil pipelines may not early adopt this accounting standard for financial accounting and reporting to the Commission until it acts on this matter. *See* All Jurisdictional Public Utilities, Licensees, Natural Gas Companies, and Oil Pipeline Companies, Docket No. AI02–1–000, issued February 20, 2002, found at *http://www.ferc.gov/news/ai02–1–000.htm.*

[5] FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6).

3. What specific categories of existing fixed assets have asset retirement obligations that would be recognized and measured under such requirements? Please provide an approximation of the additional asset retirement obligation liability that would be recognized under this requirement, the net income effect, and other related financial consequences. Please explain.

4. Under the Uniform Systems of Accounts, what existing or new balance sheet accounts should be used to record the capitalized asset retirement costs? Also, what existing or new primary plant account(s) should be used to record the capitalized asset retirement costs? Please explain.

5. What records should be maintained to support the capitalized asset retirement costs and related liability for the asset retirement obligations? Please explain.

6. Under the Uniform Systems of Accounts, what existing or new accounts for depreciation expense and accumulated depreciation should be used to record depreciation on the capitalized asset retirement costs? Please explain.

7. What detailed depreciation records are needed for the capitalized asset retirement costs? Please explain.

8. Under the Uniform Systems of Accounts, what existing or new accounts should be used to record liabilities for asset retirement obligations and the related time value of money (accretion expense)? Please explain.

9. What records should be maintained to support the entries and the amounts included in the liability account so that companies can furnish complete information for each specific liability related to each property that gives rise to a liability for an asset retirement obligation? Please explain.

10. How does the accounting for asset retirement obligations impact the Uniform Systems of Accounts' definitions for Depreciation, Service Value, Net Salvage, Salvage Value, Cost of Removal and Service Life? [6] Please explain.

11. What revisions should be made to the Uniform Systems of Accounts' definitions for Depreciation, Service Value, Net Salvage, Salvage Value, Cost of Removal and Service Life as a result the accounting for asset retirement to differentiate between the cost of removal that is not recognized as a liability for cost of removal versus the cost of removal recognized as a liability for an asset retirement obligation? Please explain.

12. What are the implications of the accounting for asset retirement obligations on depreciation procedures (group method versus component method)? Please explain.

13. How should a regulated entity account for the transition adjustment related to the adoption of accounting for asset retirement obligations? Please explain.

14. At the date of adoption of the accounting pronouncement, how would a jurisdictional entity account for asset retirement obligations associated with plant or facilities that have been closed or abandoned (i.e. retired but not physically removed)? Please explain.

15. If an existing component part of a larger system asset has a legal obligation associated with its retirement, and the component's useful life is shorter than the life of the larger system asset of which it is a part, must a liability for the asset retirement obligation be recognized for the component and the asset retirement costs be depreciated over the component useful life? At the date of adoption will there be sufficient information and records related to such components to recognize and measure the related asset retirement obligations? Please explain.

16. How should any balances remaining at the date of settlement of liabilities for asset retirement obligations be accounted for? Please explain.

17. How will the recognition of asset retirement obligations affect the Commission's accounting for capital and operating leases? Under the Uniform Systems of Accounts, what new or existing balance sheet and income statement accounts should be used by a lessor and lessee to account for asset retirement obligations associated with either capital leases or operating leases? Please explain.

18. Does ''spent nuclear fuel'' and ''storage casks used for interim storage of spent fuel'' result in legal asset retirement obligations? [7] If so, under the Uniform Systems of Accounts, what new or existing balance sheet and income statement accounts should be used to record the amounts related to the asset retirement obligations for ''spent nuclear fuel'' and the ''storage cask used for interim storage of spent fuel''? Please explain.

19. What are the issues involved in reconciling the new accounting requirements for asset retirement obligations with existing rate practices which may recover asset retirement obligations, all or in part, through general rates, depreciation or negative salvage (or decommissioning) allowances? How should the transition to the new rule reflect that such costs (i.e., negative salvage) may have already been recovered in existing rates?

20. What are the implications of asset retirement obligations accounting model that may result in higher total expenses in the later years of an asset's life than in earlier years because of compounding interest effect?

21. For rate making purposes, how can interim events involving system components, such as asset retirements, sales or spin downs be properly reflected if the asset retirement obligations were not recognized for the components?

[FR Doc. 02–8133 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

[6] 18 CFR Parts 101, 201 and 352 (2001).

[7] Nuclear fuel discharged from reactors at the end of useful life is referred to as spent fuel and is highly radioactive. It is stored either in storage pools or dry cask storage facilities, until a repository is made available for permanent disposal. The U.S. Department of Energy (DOE) is to provide for the ultimate disposal of spent fuel waste under the Nuclear Waste Policy Act of 1982, as amended. To fund the DOE's contractual obligations, each nuclear utility pays an ongoing fee, in addition to a one-time payment to cover disposal of fuel utilized prior to April 7, 1983.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301226; FRL–6828–8]

RIN 2070–AC18

Methoxychlor; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances for residues of methoxychlor because (1) all registrations of pesticides containing methoxychlor are suspended or canceled, and (2) there are insufficient data to find the pesticide safe in accordance with section 4(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The primary registrant of methoxychlor (Kincaid Enterprises, Inc.) has failed to submit the necessary data required to support continued registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products containing methoxychlor. As a result, all methoxychlor products are currently suspended. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 79 tolerances and/or exemptions which would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301226, must be received on or before June 3, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301226 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave, NW., Washington, DC 20460; telephone number: (703) 305–5400; e-mail address: edwards.beth@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	111 112 311 32532	Crop production Animal production Food manufacturing 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301226. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301226 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 Hwy., 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 in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301226. 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 listed 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. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not

proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA will issue a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

The Agency is not able to make a finding that existing tolerances for methoxychlor are safe. Based on currently available information, the Agency has significant concerns with the effects of methyoxychlor on human health and the environment. Furthermore, as of mid 2000, all product registrations of methoxychlor are either suspended due to registrants' noncompliance with a Data Call-In notice issued under FIFRA section 3(c)(2)(B) or canceled pursuant to registrants voluntary cancellation request under FIFRA section 6(f). EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have already been exhausted. A detailed description of the events leading to the methoxychlor suspension follows.

On December 9, 1988, EPA issued the Guidance for the Reregistration of Pesticide Products Containing Methoxychlor as the Active Ingredient (i.e., Methoxychlor Registration Standard). The Registration Standard included a Data Call-In Notice (DCI) issued pursuant to FIFRA section 3(c)(2)(B), which required registrants of products containing methoxychlor used as the active ingredient to develop and submit certain data. The Administrator had determined these data to be necessary to support continued registration of pesticide products containing methoxychlor as the active ingredient. Failure to comply with the requirements of a Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

Kincaid Enterprises Inc. (Kincaid) was the sole registrant who committed to produce the generic data for methoxychlor. All other registrants of end-use products requested a Generic Data Exemption (GDE) in response to the DCI. These GDE requests were granted which allowed the end-use registrants to rely on Kincaid's data.

On April 7, 1998, the Agency issued a Notice of Intent to Suspend to Kincaid because of their failure to submit certain data required by the DCI. On May 13, 1998, Kincaid requested a hearing by filing a hearing request with the Agency. On September 3, 1998, Kincaid and the Agency entered into a settlement agreement that specified the outstanding data requirements from the 1988 DCI and set forth a new schedule for their submission. The Settlement Agreement stated that if Kincaid failed to comply with any of the terms and conditions relating to any of the requirements for data generation and submission, the Agency would request that the Administrative Law Judge (ALJ) issue an order suspending the registrations of Kincaid's affected products without any opportunity for a hearing. On September 14, 1998, the ALJ issued an accelerated decision and order incorporating the Settlement Agreement. The Judge's accelerated decision and order incorporating the Settlement Agreement was entered into the public docket for the matter.

Subsequently, on December 3, 1999, Kincaid failed to satisfy certain data requirements as required by the DCI and the ALJ's Order/Settlement Agreement. The Agency requested that the ALJ enter a suspension order and a suspension order was entered for all methoxychlor pesticide product registrations held by Kincaid. The suspension became effective on January 14, 2000. Subsequently, Kincaid missed a second deadline of March 3, 2000, for a number of other studies. The Agency filed a request to the ALJ that he amend the January 14, 2000 suspension order to include these studies, and on April 12, 2000, the ALJ amended the January 14, 2000 suspension order to include the additional overdue studies as bases for suspension.

Because Kincaid failed to submit the data in violation of the 1988 DCI and the accelerated decision and order incorporating the Settlement Agreement and was no longer in compliance with the DCI, registrants of methoxychlor end-use products who were previously eligible for the GDE were also considered to be in noncompliance with the 1988 DCI requirements as amended by the accelerated decision and order incorporating the Settlement Agreement. Letters were mailed to all end-use registrants on April 14, 2000, notifying them that their GDEs for products containing methoxychlor were revoked. The letters explained that if these data requirements were not satisfied within 30 days, registrants who had received the DCI would be subject to a Notice of Intent to Suspend and those whose registrations had been granted subsequent to issuance of the DCI would be subject to a Notice of Intent to Cancel. No data were received. Notices of Intent to Suspend were issued on June 26, 2000. No Notices of Intent to Cancel were necessary because all products registered after the issuance of the DCI were voluntarily canceled. No hearings were requested, and therefore, pursuant to sections 3(c)(2)(B)(iv) and 6(e)(2), the proposed suspensions became final. The data requirements that are overdue are as follows:

Guideline	Study	Due Date
Guideline 161-3	Photodegradation - soil	12/3/99
Guideline 163-1	Leaching/adsorption/desorption	12/3/99
Guideline 83-3	Teratogenicity - rat	3/3/00
Guideline 83-3	Teratogenicity - rabbit	3/3/00
Guideline 162-2	Anaerobic metabolism	3/3/00
Guideline 171-4	Storage stability	3/3/00
Guideline 171-4	Magnitude of residue - meat, milk	3/3/00
Guideline 85-1	General metabolism	9/3/01

Additional data requirements that are still outstanding are:

Guideline	Study	Due Date
Guideline 83–1	Chronic toxicity - rodent	9/3/02
Guideline 83–1	Chronic toxicity - non-rodent	9/3/02
Guideline 83–2	Oncogenicity - rat	9/3/02
Guideline 83–2	Oncogenicity - mouse	9/3/02
Guideline 83–4	Two-generation reproduction	9/3/02

The Agency has significant concerns about the effects of methoxychlor on human health and the environment. Methoxychlor is being used by the U.S. and the Organization for Economic Cooperation and Development (OECD) as one of the key chemicals in validating components of the Endocrine Disruption Screening Program. Methoxychlor has been discussed extensively in the public literature in connection with endocrine disruption. Kupfer and Bulger (Ref. 5) found that both methoxychlor and metabolites have estrogen-like activity with several metabolites having proestrogen activity. They used an *in vitro* system involving rat liver microsomes and nicotinamide adenine dinucleotide phosphate (NADPH) for a metabolizing system with estrogen receptors from immature rat uteri as a detection system.

Gray et al. (Ref. 3) investigated the effects of methoxychlor on the pubertal development and reproductive function in the male and female rat (Long-Evans hooded) by dosing rats from gestation, weaning, lactation, through puberty with either 25, 50, 100, or 200 milligrams/kilograms/day (mg/kg/day) of methoxychlor. In females they found an acceleration of vaginal opening, abnormal estrus cycle, inhibition of luteal function and a blockage of implantation. In males they found an inhibition of somatic growth and accessory gland weight, elevated pituitary and serum prolactin levels, and a suppression of testicular Leydig cell function. Some of these effects occurred at levels as low as 25 mg/kg/day. These observations are consistent with the earlier reports that methoxychlor mimics estrogen both *in vivo* and *in vitro.*

Goldman et al. (Ref. 2) investigated the subchronic effects of methoxychlor on the rat (Long-Evans hooded) reproductive system by dosing for 8 weeks with 25 mg/kg or 50 mg/kg of methoxychlor by oral gavage. No effect was observed on the pituitary weight, serum lutenizing hormone (LH), follicle stimulating hormone (FSH), or prolactin levels and the pituitary LH of FSH concentrations. Pituitary prolactin levels were increased at both levels. There was an increase in gonadotropin-releasing hormone (GnRH) levels in the mediobasal hypothalamus at the high-dose level. The authors determined that the reproductive effects of methoxychlor are mediated in part by an increase in prolaction release which in turn influences the hypothalamic levels of GnRH. This may be considered an early effect of methoxychlor on the rat reproductive system.

Cummings and Gray (Ref. 1) of the U.S. EPA Health Effects Research Laboratory found that methoxychlor affects the decidual cell response of the rat uterus, suggesting a direct effect of the compound on the uterus with no effects on uterine weight, serum progesterone levels, or corpora lutea maintenance. Long-term exposure to methoxychlor reduced fertility and induced fetotoxicity. The effects of reduced fertility and fetotoxicity were noted in a 3-generation reproduction study. Although the available data for these three studies were limited, it is apparent that methoxychlor at 1,000 parts per million (ppm) produced reproductive effects in the form of reduced fertility index, reduced litter size, and reduced viability index.

Khera et al. (Ref. 4) on the teratogenicity of methoxychlor found that treatment of pregnant rats with either technical grade or formulation of methoxychlor produced maternal toxicity in the form of reduced body weight gain at all doses tested (50 to 300 mg/kg/day). Developmental toxicity was noted as fetotoxicity at doses of 200 and 400 mg/kg/day and as a dose-related increase of wavy ribs at 100, 200, and 400 mg/kg/day.

Methoxychlor is a member of the organochlorine class of pesticides. Other members of this class include DDT, chlorobenzilate, dicofol, and ethylan. Less closely related members of the class include lindane, dieldrin, endrin, chlordane, heptachlor, aldrin, endosulfan, depone, and toxaphene (Ref. 6). Methoxychlor was developed as a replacement for DDT and is a structural analog of DDT. Methoxychlor has also been identified as a persistent bioaccumulative toxic substance. Since there are data gaps for all of the major studies, there is no way to assess the safety of the existing tolerances to either the adult populations and especially to infants and children. Existing data concerning methoxychlor suggest significant hazards resulting from exposure to the pesticide, such that the Agency cannot (in the absence of exculpatory data) determine that there is a reasonable certainty of no harm (see Unit II.B., below).

On February 19, 2002, the Agency received a letter from Kincaid indicating that the company intends to formally request the cancellation of all crop uses for methoxychlor; however, the company intends to support the use of methoxychlor on livestock.

B. What is the Agency's Authority for Taking this Action?

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore adulterated under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be adulterated, you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

FFDCA section 408(b)(2)(A) provides that the Administrator may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe. The section further provides that the term ''safe,'' with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary

exposures and all other exposures for which there is reliable information. For the reasons stated in Unit II.A., above, existing data concerning methoxychlor suggest significant hazards resulting from exposure to the pesticide, such that the Agency cannot (in the absence of exculpatory data) determine that there is a reasonable certainty of no harm. In addition, EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. The same principles apply to uses that have been suspended but not canceled. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled or suspended if the tolerances, which EPA refers to as import tolerances, are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist or have been suspended, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When Do These Actions Become Effective?

EPA is proposing that the tolerances for methoxychlor be revoked upon publication of the final rule. EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have already been exhausted since such products have been suspended since June 26, 2000. Similarly, the Agency believes that commodities legally treated with methoxychlor have by this time cleared the channels of trade. Consequently, these tolerances are no longer needed. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration (FDA) that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of March 8, 2002, EPA has reassessed over 3,910 tolerances. This document proposes to revoke 79 tolerances which would be counted as reassessments in a final rule toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. For reassessment counting purposes, sweet potatoes and yams are counted as one tolerance and ''with or without tops'' is counted as two tolerances each for beets, radishes, rutabagas, and turnips.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods. EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select Laws and Regulations, then select Regulations and Proposed Rules and then look up the entry for this document under **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

IV. References

1. Cummings, A.M. and L.E. Gray. 1987. Methoxychlor affects the decidual cell response of the uterus but not other progestational parameters in female rats. *Toxicol. Appl. Pharmacol.* 90(2): 330–336.

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3. Gray, L.E. Jr., J. Ostby, J. Ferrell et al. 1989. A dose-response analysis of methoxychlor-induced alterations of reproductive development and function in the rat. *Fund. Appl. Toxicol.* 12(1): 92–108.

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5. Kupfer, D. and W.H. Bulger. 1987. Metabolic activation of pesticides with proestrogenic activity. *Fed. Proc.* 46(5): 1864–1869.

6. Ware, G.W. 1982. Fundamentals of Pesticides, Thompson Publications.

V. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed 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 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 OMB review or any other 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. 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 proposed 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). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: March 27, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.120 [Removed]

2. Section 180.120 is removed.

[FR Doc. 02–8155 Filed 4–3–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020329075–2075–01; I.D. 031902E]

RIN 0648–AP11

Fisheries of the Northeastern United States; Monkfish Fishery; Framework Adjustment 1

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures contained in Framework Adjustment 1 to the Monkfish Fishery Management Plan (FMP). These measures would delay for 1 year the default management measure contained in the FMP for the fishing year May, 2002– April, 2003 (Year 4), and establish management area total allowable catch (TAC) targets for Year 4 at the level of monkfish landings in Year 2. The framework would also adjust the monkfish trip limits in the Southern Fishery Management Area (SFMA) to achieve the proposed TAC while considering the effect of a Federal court order vacating differential gear-based trip limits for trawl and gillnet vessels. This proposed rule would also correct and clarify the regulatory language related to the monkfish area declaration procedures to make the procedures consistent with the intent of the FMP.

DATES: Public comments must be received on or before April 19, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Monkfish Framework 1.'' Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Framework Adjustment 1 to the Monkfish FMP, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA are also accessible via the Internet at *http://www.nero.nmfs.gov*.

Written comments regarding the approved collection-of-information requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281-9103, fax (978) 281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC)(Councils), with the NEFMC having the administrative lead. The intent of the management program established by the monkfish FMP is to eliminate overfishing by May 2002 and rebuild the stock by 2009. In order to ensure the elimination of overfishing by May 2002, current regulations specify that restrictive measures become effective for Year 4 of the management program (May 1, 2002 - April 30, 2003) unless a 3-year review of the stock status indicates that these restrictive measures are not necessary. The Year 4 default measures would eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS) and by allowing only incidental landings of monkfish. Instead of the default measures, this proposed rule, if adopted, would implement the following measures: (1) A 1-year delay of the default management measures contained in the FMP for the fishing year May, 2002 to April, 2003 (Year 4); (2) a revision of management area target TACs for Year 4 to be equivalent to the level of landings in Year 2; and (3) an adjustment of trawl and non-trawl trip limits in the SFMA to achieve the TACs, while considering the impacts of a Federal court order vacating differential gear-based trip limits for trawl and gillnet vessels.

The Monkfish Monitoring Committee (MFMC) of the NEFMC, the NEFMC, and the MAFMC evaluated biological reference points and the effectiveness of management measures to stop overfishing and to allow for rebuilding by 2009. This review relied on information from the 31st Stock Assessment Workshop (SAW 31, June 2001) and on landings and stock survey information. The MFMC noted that SAW 31 determined that the fishing mortality rate (F) reference points on which the default TACs are based are no longer reliable. Therefore, the MFMC could not develop recommendations for alternative management measures. The MFMC noted that updated resource survey indices indicated that stock abundance could have increas ed in the Northern Fishery Management Area (NFMA) and stabilized in the SFMA.

The Councils considered this information and the results of the updated stock assessment released in January 2002 (SAW 34). SAW 34 investigated several methods for assessing stock status and provided suggestions for improved biological reference points based on yield per recruit analyses. Based on the results of the current and previous assessments, an F threshold ($F_{threshold}$) of F_{max}=0.2 was recommended by the Stock Assessment Review Committee (SARC) for defining overfishing.

The assessment produced a range of fishing mortality estimates for calendar year 2000, which varied depending on the method used for calculating F and on the assumptions used regarding tow distance and relative net efficiency in the industry-based trawl survey. The F estimates produced were between 0.10 and 0.38, with 61 percent of the F estimates from the cooperative survey less than or equal to the recommended F_{max}=0.20. These F estimates included only 6 months of management restrictions, implemented for Year 2 of the FMP (effective May 1, 2000). The management restrictions consisted of the establishment of monkfish DAS, trip limits, and a minimum fish size. During 1998 and 1999, approximately one-third of the annual landings came from January - April. Thus, roughly, one-third of annual effort was likely expended in 2000 before trip limits were implemented on May 1. This suggests that, even without further restrictions, F estimates for calendar year 2001 will be lower than the F for calendar year 2000, since management restrictions were in force for all of 2001.

Given the proximity of F estimates for calendar year 2000 to F=0.20, preliminary data from the NMFS' fall trawl survey for 2001 further support the conclusion that the proposed measures will end overfishing. These data, which are still preliminary, show positive results for the stock in both management areas. After considering the information presented above, NMFS has determined that the proposed measures are consistent with the FMP objectives of ending overfishing in 2002 and of rebuilding the monkfish stock by 2009.

The Councils have also started to develop Amendment 2 to the FMP to incorporate the results of SAW 34 in

developing revisions to the management program, including the rebuilding plan and the overfishing definition. The Councils intend to implement Amendment 2 by May 1, 2003 (Year 5).

Management Measures

Optimum yield (OY) for Year 4 would be specified at 19,595 metric tons (mt), with TACs for the NFMA and SFMA set at 11,674 mt and 7,921 mt, respectively. The analysis in Framework 1 determined that these TACs are consistent with the fishing mortality threshold for ending overfishing of F=0.2, recommended by SAW 34.

Framework 1 would also adjust the monkfish trip limits in the SFMA as needed to achieve the TACs while considering the effect of a Federal court order issued on Feburary 15, 2002, in the case of *Hall et al.* v. *Evans et al.*(C.A. No. 99–5491 (D.R.I.), pursuant to an initial court decision issued on August 14, 2001, vacating differential gear-based trip limits for trawl and gillnet vessels. This framework would allocate, as in Years 2 and 3, 40 monkfish DAS to limited access permit holders for Year 4, with no monkfish trip limit while fishing on a monkfish or multispecies DAS in the NFMA, and a trip limit of 550 lb (249 kg) (tail weight, per DAS) for permit categories A and C, or 450 lb (204 kg) (tail weight, per DAS) for permit categories B and D while fishing on a monkfish DAS in the SFMA. The incidental catch limits, which vary by permit category and fishing area, would continue at current levels for 1 additional year.

Technical Correction

This proposed rule would also make a technical correction to the regulatory language at § 648.94(f) citing area declaration procedures. This would make the regulatory language consistent with the FMP, which stated that under certain circumstances vessels with multispecies, scallop, and monkfish DAS permits would be required to declare into the NFMA to fish. The collection-of-information requirements for the FMP approved under the Paperwork Reduction Act (PRA) also contained references to the multispecies, scallop and monkfish DAS permit vessels. When the regulations implementing the FMP were published, NMFS inadvertently only referenced vessels with monkfish DAS permits, rather than also including vessels with multispecies and scallop permits. Therefore, this action proposes to correct the current regulatory language at § 648.94(f) to include all vessels fishing for monkfish under a multispecies, scallop, or monkfish DAS in the NFMA.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council and NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reason for being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. This action does not contain any additional collection-of-information, reporting or recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules. A summary of the analysis follows:

The IRFA analysis examined the economic impacts of three sets of management alternatives for Year 4 of the FMP: Preferred and non-preferred alternatives for OY and management area TACs, and a ''no action'' alternative. The preferred alternative consists of the measures outlined in this proposed rule. These measures consist of a delay in the Year 4 default management measures for 1 year and of the establishment of an OY of 19,595 mt for Year 4, with management area TACs of 11,674 mt and 7,921 mt for the NFMA and SFMA, respectively. This OY is equivalent to the level of landings generated during Year 2 of the rebuilding program.

The non-preferred alternative would establish an OY of 11,697 mt for Year 4, with management area TACs of 5,673 mt and 6,024 mt for the NFMA and the SFMA, respectively. This OY is equivalent to the OY specified for Years 2 and 3 of the rebuilding plan for monkfish. In addition, the preferred and non-preferred alternatives would adjust the directed monkfish trip limits in the SFMA to achieve corresponding TAC for that area. The ''no action'' alternative considers the impacts associated with default management measures.

The category of entities likely to be affected by this action are the limited access monkfish permit holders, which are virtually all small entities, primarily trawl and gillnet vessels fishing in the SFMA. Thus, analysis of the impacts of this proposed rule necessarily includes impacts on all small entities affected. The preferred alternative affects only a subset of those entities, primarily trawl and gillnet vessels fishing in the SFMA. As of March 13, 2002, there were 704 vessels holding active limited access monkfish permits and an additional 34 vessels holding limited access monkfish permits in a Confirmation of Permit History. Approximately 160 of these vessels declared their intention to fish in the NFMA for at least 30 days during the 2001 fishing year (May 1, 2001, to April 30, 2002), thereby fishing under the less restrictive management measures of the NFMA.

The preferred alternative would result in loss of income from fishing year 2000 levels for several vessel types. However, these losses are lower than the losses that would result from implementation of either the non-preferred or no action alternative. Under the preferred alternative, approximately 10 percent of vessels less than 50 ft (15.24 m) in length would experience a 3.4-percent or greater reduction in income as a result of the proposed measures. However, 10 percent of these vessels would experience a 12.4-percent or greater reduction in income under the non-preferred alternative and a 54.6-percent or greater loss in income under the ''no action'' alternative. The income of vessels in other size categories would either not be affected by implementation of the preferred alternative, or would be reduced by less than 1 percent. Conversely, 10 percent of vessels greater than or equal to 50 ft (15.24 m) in length would experience some income loss under the non-preferred and ''no action'' alternatives. For example, vessels between 50 and 70 feet (21.34 m) in length would experience an income loss of 1.5 percent or greater under the non-preferred alternative, and a 10.2-percent or greater loss in income under the ''no action'' alternative.

Vessels that fish for monkfish but that are not eligible for limited access permits to fish for Northeast multispecies or sea scallops (category A and B permits) would be the vessels most severely impacted by the no action alternative. Under this alternative, 10 percent of these vessels would lose 100 percent of their net income from fishing. However, 10 percent of vessels in these categories would likely not be affected at all because their landings during the 2000 fishing year were at or below the incidental catch levels allowed under the ''no action'' alternative. Impacts to these vessels would be substantially less under either the preferred or non-preferred alternatives. Under the preferred alternative, 10 percent of these vessels would experience no income loss, but 50 percent would experience an income loss of 3.1 percent or greater. Under the non-preferred alternative, 10 percent of these vessels would experience no income loss, but 50 percent would experience an income loss of 9.9 percent or greater.

Under any of the three alternatives, vessels that hold limited access permits for either multispecies or scallops in addition to monkfish (category C and D) would be the least affected of all vessels holding limited access monkfish permits. Under the preferred alternative, category C vessels have a higher possession limit than category D vessels. Ten percent of category C vessels would experience a 0.8–percent or greater reduction in income, and 10 percent of category D vessels would experience a 2.9–percent or greater reduction in income. Under the non-preferred alternative, category C vessels also have a higher trip limit than category D vessels. Category C vessels would experience a 3.7–percent or greater loss in income, while category D vessels would experience a 5.9–percent or greater loss in income. Finally, the ''no action'' alternative would result in 10 percent of category C vessels having a 25.8–percent loss in income, while category D vessels would experience a 43.3–percent loss in income.

Geographically, vessels homeported in New Jersey and Delaware (combined) would be the vessels most affected under all three alternatives. Under the ''no action'' alternative, 10 percent of these vessels would experience a 72–percent or greater loss in income, while 10 percent of these vessels would experience a 12.5–percent or greater loss in income under the non-preferred alternative. Under the preferred alternative, 10 percent of the vessels homeported in New Jersey and Delaware would experience only a 2.1–percent or greater loss in income.

A copy of this analysis is available from the Council (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This action makes a technical correction to the regulatory language referencing area declaration procedures. This collection-of-information requirement that is subject to the PRA has been approved by OMB under control number 0648–0202. Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, reporting and recordkeeping requirements.

March 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.92, paragraph (b)(1) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) *Limited access monkfish permit holders.* For fishing year 2002, all limited access monkfish permit holders shall be allocated 40 monkfish DAS. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section. For fishing years 2003 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

* * * * *

3. In § 648.94, revise paragraph (b)(1); remove and reserve paragraph (b)(2); and revise the introductory paragraph headings of (b)(3), (b)(4), (b)(5), and (b)(6); the first sentence of paragraph (b)(7), the introductory paragraph headings of (c)(2)(i) and (ii), and the first sentence of paragraph (f) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the SFMA.* (i) *Category A and C vessels.* Category A and C vessels fishing under the monkfish DAS program in the SFMA may land up to 550 lb (249 kg) tail-weight or 1,826 lb (828 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *Category B and D vessels.* Category B and D vessels fishing under the monkfish DAS program in the SFMA may land up to 450 lb (204 kg) tail-weight or 1,494 lb (678 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iii) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(1)(ii) and (iii) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(2) [Reserved]

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2003—* * * *

* * * * *

(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2003, and thereafter—* * * *

* * * * *

(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2003.* * * *

* * * * *

(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2003, and thereafter.** * *

* * * * *

(7) *Category C and D scallop vessels declared into the monkfish DAS program without a dredge on board.* Category C and D vessels that have declared into the monkfish DAS program and that do not fish with or have on board a dredge are subject to the same possession limits as specified at paragraph (b)(1) of this section. * * *

(c) * * *

(2) * * *

(i) *Prior to May 1, 2003.** * *

(ii) *From May 1, 2003, and thereafter.** * *

* * * * *

(f) *Area declaration.* In order for a vessel fishing under a multispecies, scallop, or monkfish DAS to fish for monkfish under the less restrictive management measures of the NFMA, such vessel must declare into, and fish for monkfish exclusively in, the NFMA for a period of not less than 30 days. * * *

* * * * *

[FR Doc. 02–8076 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 65

Thursday, April 4, 2002

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

Forest Service

Wayne National Forest; Revised Land and Resource Management Plan; Athens, Gallia, Hocking, Jackson, Lawrence, Monroe, Morgan, Noble, Perry, Scioto, Vinton and Washington Counties, OH

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The USDA Forest Service intends to prepare an environmental impact statement for revising the Wayne National Forest Land and Resource Management Plan (*Forest Plan*). The revised *Forest Plan* will replace the current *Forest Plan*, which the Regional Forester approved January 4, 1988, and has been amended 12 times. The 1988 *Forest Plan* as amended will remain in effect until this revision effort is completed. This notice identifies the topics that will help focus our revision effort, lists possible changes to the *Forest Plan*, displays the estimated dates for filing the Draft EIS, provides information concerning public participation, and provides the names and addresses of the responsible agency official and the individuals who can provide additional information.

DATES: We need to receive your comments on this Notice of Intent in writing within 90 days after this Notice is published in the **Federal Register**. The Draft EIS and draft revised *Forest Plan* are expected to be available for public review by December 2004. The Final EIS and revised *Forest Plan* are expected to be completed by December 2005.

ADDRESSES: Send written comments to: NOI–FP Revision, Wayne National Forest, 13700 US Highway 33, Nelsonville, OH 45764, or direct electronic mail to: *''r9_wayne_website@fs.fed.us'',* and ''ATTN: Forest Plan Revision'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Bob Gianniny, Forest Planner; Ken Arbogast, Forest Public Affairs Officer; Rebecca Ewing, Forest Biologist; or Connie Roberts, Planning Management Assistant; at the address listed in the previous section, or by calling 740–753–0101; fax number 740–753–0118; or TDD 800–877–8339. Further information can also be obtained by sending electronic mail to: *''r9_wayne_website@fs.fed.us'',* or by accessing the forest Web page at *www.fs.fed.us/r9/wayne.*

Responsible Official: The Responsible Official for this action is Donald L. Meyer, Acting Regional Forester, Eastern Region, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53203.

SUPPLEMENTARY INFORMATION: The Regional Forester for the Eastern Region gives notice of the agency's intent to prepare an EIS to revise the Wayne National *Forest Plan* pursuant to 16 U.S.C. 1604(f)(5) and USDA Forest Service National Forest System Land and Resource Management Planning regulations. The Regional Forester approved the original Wayne National *Forest Plan* in January 1988. This plan guides the overall management of the Wayne National Forest.

Forest Plan Decisions

We make six primary decisions in the *Forest Plan*:

1. *Forest-wide multiple-use goals and objectives.* Goals describe a desired condition to be achieved sometime in the future. Objectives are concise, time-specific statements of measurable planned results that respond to the goals.

2. *Forest-wide management requirements (standards and guidelines.)* These are limitations on management activities, or advisable courses of action that apply across the entire forest.

3. *Management area direction applying to future activities in each management area.* This is the desired future condition specified for certain portions of the forest, and the accompanying standards and guidelines to help achieve that condition.

4. *Lands suited and not suited for resource use and production (timber management, grazing, etc.)*

5. *Monitoring and evaluation requirements needed to gauge how well the plan is being implemented.*

6. *Recommendations to Congress, if any (such as Wilderness or Wild and Scenic River designation)*

The scope of this Revision is limited to changing only those portions of the current *Forest Plan* that need revision, update, or correction. We propose to narrow the scope of revising the *Forest Plan* by focusing on topics identified as being most critically in need of change. The six decisions listed above will be revisited only in how they apply to the revision topics that are identified.

Purpose and Need for Action

There are three compelling reasons to revise the 1988 *Forest Plan*: (1) Nearly 15 years have passed since the Regional Forester approved the original *Forest Plan* for the Wayne National Forest and national forests must revise the forest plan at least every 15 years according to requirements of the National Forest Management Act (U.S.C. 1604[f][5]); (2) agency goals and objectives, along with other national guidance for strategic plans and programs, have changed more than can effectively be covered by additional forest plan amendments and (3) incorporate new information and address changed conditions.

Background—The Setting

The Wayne National Forest forms the core of the hill country of southeastern Ohio, the most heavily forested part of the state. Just 200 years ago, this region of the Appalachian plateau was viewed by most Americans as part of a vast wilderness. Today many people still view the Wayne as a remnant of the forest primeval. But the impacts of historic industry and agricultural practices have left indelible marks upon the land. Virtually all of the forest that covered Ohio when American settlers arrived was cut to make way for farms and to fuel both home and industry. Mining for iron ore, limestone, coal and clay scarred hillsides and polluted many streams. As factories closed and farms failed in the 1930s, the Forest Service began to acquire and restore what were once dubbed ''the lands that nobody wanted.'' After nearly 70 years, the innate resilience of the hill country forest, enhanced by the work of the Forest Service and countless partners, has created a new forest that many people now value for its opportunities:

to experience nature; to enjoy a variety of recreation; to explore the unique heritage of Southeast Ohio, once a major link in the Underground Railroad; and to employ the Forest's resources for the region's economic development.

Today, most of Ohio is dominated by rich farmland, industrial cities, sprawling suburbs and busy highways; and ranks 7th among states in population and 47th in public lands per capita. This scarcity of public lands creates intense competing demands for the Wayne's limited landbase and resources. The challenge for those who choose to participate in the revision of the *Forest Plan* is to provide information and ideas that will help the Forest Service balance those competing demands in a way that will continue to provide for multiple uses of the Wayne National Forest. Given the significant impact that past practices by the region's agriculture and industries have had upon the land, the *Forest Plan* management direction will continue to place special priority upon the restoration of the forest, the lands, the watersheds and the ecosystem.

Proposed Action

The revision of the Wayne *Forest Plan* will focus on management direction identified as needing change. The following Revision Topics were identified through public comment, through monitoring and evaluation, and through experience with implementation of the *Forest Plan* since 1988:

1. *Watershed Health:*

- Protect and restore watershed health, including restoration of abandoned mine lands;
- Protect riparian areas.

2. *Ecosystem Restoration:*

- Restore the mixed oak ecosystem to a sustainable level;
- Use vegetative management techniques to move toward the desired future condition;
- Control non-native invasive species;
- Provide a range of ecological conditions to maintain diversity of native plants and animals.

3. *Recreation Management:*

- Provide a visually pleasing landscape;
- Maintain the range of recreation opportunities currently available;
- Provide trails for motorized and non-motorized users;
- Manage pre-historic and historic cultural resources, including preservation of sites associated with the Underground Railroad.

4. *Land Ownership:*

- Acquire and exchange land to increase contiguous Federal ownership and reduce the existing fragmented ownership pattern;
- Manage National Forest boundaries to reduce trespass and encroachments.

5. *Minerals Resource Management:*

- Minimize adverse environmental impacts to Federal resources when private mineral rights are developed;
- Identify areas appropriate for leasing of federally held oil and gas rights consistent with national direction.

6. *Roadless Area Inventory and Evaluation; Wilderness Recommendation; and Wild and Scenic River Recommendations:*

- Protect the wilderness characteristics of those areas identified for potential wilderness designation;
- Protect rivers eligible for inclusion in the national Wild and Scenic Rivers system.

Based on these Revision Topics and action items, the Forest planning team is gathering information for an analysis of current and projected uses, demand, and capabilities of the Forest. Data gathering/analyses that are either underway or planned include a recreation feasibility study, a social assessment, evaluation of potential roadless areas, evaluation of rivers for designation as Wild, Scenic or Recreation status, and species viability evaluations. Another analysis will compare historical and current ecological conditions within the Forest and across the broader landscape of southeastern Ohio. Collectively this information and analysis will contribute to our Analysis of the Management Situation. The studies, and related references compiled by the planning team, will be made available for public review when completed.

In addition to the Revision Topics, we propose to revise the *Forest Plan* to:

- Make minor changes throughout the *Forest Plan* for new or updated information;
- Update the monitoring and evaluation strategy in the current *Forest Plan.*

Additional detail on the Revision Topics is available on request. You may request the additional information by: accessing the Forest Web page at *www.fs.fed.us/r9/wayne* by writing or e-mailing to the address listed in this notice; or by calling the phone number listed above. You are encouraged to review this additional documentation before commenting on the Notice of Intent.

Topics Not Addressed in This Revision

Forest plan decisions do not change laws, regulations or rights. The revised *Forest Plan* will only make decisions that apply to National Forest System lands. The *Forest Plan* will make no decisions regarding management or use of privately owned lands or reserved and outstanding mineral estates. Topics related to implementing projects or enforcing regulations are also beyond the scope of what can be decided in a forest plan.

The management guidelines related to Threatened and Endangered species are not included as a revision topic because the Forest is currently amending the existing *Forest Plan* based on formal consultation with the USDI Fish and Wildlife Service. All information will be brought forward into the revised *Forest Plan* and does not need to be duplicated during the revision process. The alternatives in the Final EIS will be analyzed for their effects on Threatened and Endangered species.

Public comments received on topics that will not be addressed in the revised *Forest Plan* will be forwarded to the managers responsible for that topic area. The comments will be considered as managers develop information and proposals related to those topics. Such proposals may result in future plan amendments, changes in implementation, changes in program emphasis, or various other means of addressing the concerns related to a particular topic. Implementation of proposals will be addressed as budget priorities allow.

Possible Alternatives

We will consider a range of alternatives to the proposed action when revising the *Forest Plan.* Alternatives will be developed to address different options to resolve issues raised about the proposed action, and the Revision Topics and proposals listed above, and to fulfill the purpose and need described earlier in this document. Alternatives will provide different ways to address and respond to issues identified during the scoping process. A ''No Action'' alternative is required and will be considered. For this analysis, the No Action alternative means that management would continue under the existing *Forest Plan* as amended.

Decision Framework

The Responsible Official will decide on the management direction for the Wayne National Forest. The Responsible Official's choices will include:

1. The Proposed Action described in this Notice of Intent;

2. The No Action Alternative which would continue management under the current *Forest Plan* as amended; and

3. Alternatives developed during the revision process to address issues raised about the Proposed Action.

Inviting Public Participation

After the publication of this Notice of Intent, we will provide opportunities for public involvement including: 90-day formal comment period, public meetings, written comments, Web site and e-mail. The Forest Service will host a series of public meetings to (1) establish multiple opportunities for the public to generate ideas, concerns, and alternatives, (2) present and clarify proposed changes to the *Forest Plan*; (3) describe ways that individuals can respond to this Notice of Intent; and (4) invite comments from the public on this proposal for revising the *Forest Plan*.

The table below is the schedule of initial meetings that will be held during the 90-day comment period.

Community	Date	Time	Location
Canton, Ohio	6/25/02	5–9 p.m	Four Points Sheraton, 4375 Metro Circle NW., (330) 494–7129.
Cincinnati, Ohio	6/04/02	5–9 p.m	Clarion Hotel & Suites, 5901 Pfeiffer Rd., (513) 793–4500.
Cleveland area—Independence, Ohio	6/24/02	5–9 p.m	Holiday Inn, 6001 Rockside Rd., (216) 524–8050.
Columbus area—Dublin, Ohio	6/10/02	5–9 p.m	Embassy Suites Hotel, 5100 Upper Metro Pl., (614) 790–9000.
Dayton area—Fairborn, Ohio	6/03/02	5–9 p.m	Wright State Univ., Student Union Bldg., 3640 Colonel Glenn, (937) 775–5512.
Graysville, Ohio	6/22/02	1–5 p.m	Community Center, 38851 State Rt. 26, (740) 934–2245.
Huntington, West Virginia	6/05/02	5–9 p.m	Radisson Hotel, 1001 Third Avenue, (304) 525–1001.
Logan, Ohio	6/13/02	5–9 p.m	Logan-Hocking Middle, 1 Middle School Drive, (740) 385–8764.
Rio Grande, Ohio	6/29/02	1–5 p.m	U. of Rio Grande, Fine Arts Center F23, (740) 245–7404.
Zanesville, Ohio	6/26/02	5–9 p.m	Holiday Inn, 4645 East Pike, (740) 453–0771.

From mid-2002 through mid-2004, we will validate issues and develop alternatives. We will provide many types of public involvement in support of alternative development, including: Public workshops, collaborative meetings, written comments, website, and e-mail.

Late in the year 2004 we will release our proposed revised *Forest Plan* and a draft environmental impact statement. We will again provide many types of public involvement including 90-day formal comment period, public meetings, and written comments.

During most of 2005 we will address the public comment and revise the Draft EIS based on those comments and further analysis. In late 2005, we will release the decision, final revised *Forest Plan*, Final EIS, and record of decision. We will provide informational meetings to explain these documents and decision on the final *Forest Plan*.

Availability of Public Comment

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and where the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Comment Requested

This Notice of Intent initiates the scoping process which assists the Forest Service in the development of the environmental impact statement. Comments will be most helpful if they are written and are specific in nature, stating not only the area of concern but also the reason for the concern.

Proposed New Planning Regulations

The Department of Agriculture published new planning regulations in November of 2000. Concerns regarding the ability to implement these regulations prompted a review with probable revision of these regulations. On May 10, 2001, Secretary Veneman signed an interim final rule allowing forest plan amendments or revisions initiated before May 9, 2002, to proceed either under the new planning rule or under the 1982 planning regulations. The Wayne National Forest revision process will start under the 1982 planning regulations, pending future direction in revised regulations.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft EIS will be prepared for comment. The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period for the draft environmental impact statement so that substantive comments and objections are made available to the Forest Service

at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council of Environmental Quality Regulations (*http://ceq.eh.doe.gov/nepa/nepanet.htm*) for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 28, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–8124 Filed 4–3–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Central Idaho Resource Advisory Committee Meeting; Salmon-Challis National Forest, Butte, Custer, and Lemhi Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting of the Resource Advisory Committee.

SUMMARY: The Central Idaho Resource Advisory Committee will meet at 2 p.m., April 11, 2002 at the Custer County Courthouse, Challis, Idaho. The 15-member committee will be evaluating proposed projects and recommending projects to the Salmon—Challis National Forest. The committee will also discuss individual project proposals for 2002. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to provide advice and recommendations consistent with the purposes of the Act.

George P. Matejko,

Forest Supervisor, Salmon—Challis National Forest, Designated Federal Official.

[FR Doc. 02–8178 Filed 4–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Announcement of Funding To Develop Essential Community Facilities in Rural Communities for Eligible Tribal Colleges Listed as 1994 Land Grant Institutions That Have Met the Criteria Under the Equity in Education Land-Grant Status Act

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of $4 million in national competitive grant funds to be administered in accordance with this Notice, 7 U.S.C. 1926(a)(19), and the Community Facilities grant program (7 CFR part 3570, subpart B) for tribal colleges to develop essential community facilities in rural communities.

DATES: Applications may be submitted at any time until funds are exhausted. (See Allocation of Funds and Selection Process.)

ADDRESSES: Entities wishing to apply for assistance are encouraged to contact their local USDA Rural Development State office for guidance on the intake and processing of preapplications. A listing of Rural Development State offices, addresses, telephone numbers, and a person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office

Suite 601, Sterling Centre, 4121 Carmichael Road Montgomery, AL 36106–3683, 334–279–3400, James B. Harris

Alaska State Office

800 W. Evergreen, Suite 201, Palmer, AK 99645–6539, 907–761–7705, Dean Stewart

Arizona State Office

Phoenix Corporate Center, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, 602–280–8700, Leonard Gradillas

Arkansas State Office

700 W. Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, 501–301–3200, Jesse G. Sharp

California State Office

430 G Street, #4169, Davis, CA 95616–4169, 530–792–5800, Janice Waddell

Colorado State Office

655 Parfet Street, Room E100, Lakewood, CO 80215, 303–236–2801, Leroy Cruz

Delaware State Office*\

4607 S. DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, 302–697–4300, James E. Waters

Florida State Office**\

4440 N.W. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, 352–338–3400, Glenn W. Walden

Georgia State Office

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, 706–546–2162, Jerry Thomas

Hawaii State Office

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, 808–933–8380, Thao Khamoui

Idaho State Office

9173 W. Barnes Drive, Suite A1, Boise, ID 83709, 208–378–5600, Dan Fraser

Illinois State Office

2118 West Park Court, Suite A, Champaign, IL 61821, 217–403–6200, Gerald Townsend

Indiana State Office

5975 Lakeside Boulevard, Indianapolis, IN 46278, 317–290–3100, Gregg Delp

Iowa State Office

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, 515–284–4663, Dorman A. Otte

Kansas State Office

1303 SW First American Place, Suite 100, Topeka, KS 66604–0440, 785–271–2700, Gary Smith

Kentucky State Office

Suite 200, 771 Corporate Drive, Lexington, KY 40503, 859–224–7300, Vernon C. Brown

Louisiana State Office

3727 Government Street, Alexandria, LA 71302, 318–473–7920, Danny Magee

Maine State Office

967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, 207–990–9106, Alan Daigle

Massachusetts State Office***\

451 West Street, Amherst, MA 01002, 413–253–4300, Daniel Beaudette

Michigan State Office

3001 Coolidge Road, Suite 200, East Lansing, MI 48823, 517–324–5100, Philip H. Wolak

Minnesota State Office

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, 651–602–7800, James Maras

Mississippi State Office

Federal Building, Suite 831, 100 W. Capitol, Jackson, MS 39269, 601–965–4316, Darnella Smith-Murray

Missouri State Office

601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, 573–876–0976, D. Clark Thomas

Montana State Office

Unit 1, Suite B, P.O. Box 850, 900 Technology Boulevard, Bozeman, MT 59715, 406–585–2580, Deborah Chorlton

Nebraska State Office

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, 402–437–5551, Denise Brosius-Meeks

Nevada State Office

1390 South Curry Street, Carson City, NV 89703–9910, 775–887–1222, Mike E. Holm

New Jersey State Office

Tarnsfield Plaza, Suite 22, 790 WoodLane Road, Mt. Holly, NJ 08060, 609–265–3600, Michael P. Kelsey

New Mexico State Office

6200 Jefferson Street NE, Room 255, Albuquerque, NM 87109, 505–761–4950, Clyde F. Hudson

New York State Office

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, 315–477–6400, Gail Giannotta

North Carolina State Office

4405 Bland Road, Suite 260, Raleigh, NC 27609, 919–873–2000, Phyllis Godbold

North Dakota State Office

Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, 701–530–2037, Donald Warren

Ohio State Office

Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, 614–255–2400, David Douglas

Oklahoma State Office

100 USDA, Suite 108, Stillwater, OK 74074–2654, 405–742–1000, Rock W. Davis

Oregon State Office

101 SW Main, Suite 1410, Portland, OR 97204–3222, 503–414–3300, Jerry W. Sheridan

Pennsylvania State Office

One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, 717–237–2299, Gary Rothrock

Puerto Rico State Office

IBM Building, Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, 787–766–5095, Pedro Gomez

South Carolina State Office

Strom Thurmond Federal Building, 835 Assembly Street, Room 1007, Columbia, SC 29102, 803–765–5163, Larry Floyd

South Dakota State Office

Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, 605–352–1100, Roger Hazuka

Tennessee State Office

Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, 615–783–1300, Keith Head

Texas State Office

Federal Building, Suite 102, 101 South Main, Temple, TX 76501, 254–742–9700, Eugene G. Pavlat

Utah State Office

Wallace F. Bennett Federal Building, 125 S. State Street, Rm. 4311, P.O. Box 11350, Salt Lake City, UT 84147–0350, 801–524–4320, Bonnie Carrig

Vermont State Office****

City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, 802–828–1600, Rhonda Shippee

Virginia State Office

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, 804–287–1550, Carrie Schmidt

Washington State Office

1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, 360–704–7740, Sandi Boughton

West Virginia State Office

Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, 304–284–4860, Dianne Crysler

Wisconsin State Office

4949 Kirschling Court, Stevens Point, WI 54481, 715–345–7600, Mark Brodziski

Wyoming State Office

100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82602, 307–261–6300, Charles Huff

* The Delaware State Office also administers the Maryland program.

** The Florida State Office also administers the Virgin Island program.

*** The Massachusetts State Office also administers the Rhode Island and Connecticut programs.

**** The Vermont State Office also administers the New Hampshire program.

FOR FURTHER INFORMATION CONTACT: Andrea Barnett, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Ave., SW., Washington, 14 DC 20250–0787, Telephone (202) 720–1490, Facsimile (202) 690–0471, E-mail: *abarnett@rdmail.rural.usda.gov.*

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0173 in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Authorizing Legislation and Regulations

This program is authorized under section 306(a) of the Consolidated Farm and Rural Development Act. RHS will administer these funds using the same regulations that govern its Community Facilities grant program. Program administration, eligibility, processing, and servicing requirements that govern the Community Facilities grant program may be found under 7 CFR part 3570, subpart B.

Background

Under the FY 2002 appropriation, Congress appropriated $4 million for a Community Facilities grant program for tribal colleges, hereafter referred to as the Tribal College Initiative. The eligible tribal colleges are 1994 land-grant institutions that have met the criteria under the Equity in Education Land-Grant Status Act of 1994. These funds are in addition to the Community Facilities grant program's regular allocation of competitive grant funds.

Additional Eligibility Requirements

In addition to those requirements contained in 7 CFR part 3570, subpart B, applicants eligible to compete for tribal college funds for FY 2002 must be one of the land-grant institutions that meet the criteria under the Equity in Education Land-Grant Status Act of 1994.

Allocation of Funds

All Tribal College Initiative funds will remain in the National Office reserve for funding consideration for FY 2002. Project selections will be on a national competitive basis. There will be two windows of opportunity to compete for grant funding. It is anticipated, the first 16 round of funding selections will be made after May 10, 2002. The second round will be held after August 23, 2002. Each application will be limited to $200,000.

Selection Process

Once a determination has been made by the State Office that an applicant is eligible, the preapplication is evaluated competitively and points awarded as specified in the project selection priorities contained in 7 CFR part 3570, subpart B. The State Director or designee will then forward the request to the National Office to compete for funding consideration. Projects will then be rated, ranked, and selections made in order of priority. Each proposal will be judged on its own merit. Unless withdrawn by the applicant, projects not selected for funding consideration for the first round of funding selections will remain eligible to compete for the next round of funding.

To be considered for the first window, all preapplications along with supporting documentation satisfactory to the Agency must be received by the Rural Development State or designated field office by close of business May 3, 2002. To be considered for the second window, all preapplications must be received by the Rural Development State or designated field office by close of business August 16, 2002.

Notice of Invitation to Submit Complete Application

All preapplications selected for funding consideration will be notified by the State or field office by issuing Form AD–622, ''Notice of Preapplication Review Action.'' At that time, the proposed recipient will be invited to submit a complete application, along with instructions related to the agreed upon award amount, and asked to schedule an application conference to discuss items needed for formal application and to further clarify issues related to the project.

Final Approval and Funding Process

Final approval is subject to the availability of funds; the submission by the applicant of a formal, complete application and related materials that meet the program requirements and responsibilities of the grantee (contained in 7 CFR part 3570, subpart B); the letter of conditions; and the grant agreement. Those preapplications that do not have sufficient priority necessary to receive funding consideration for FY 2002 will be notified, in writing, by the Agency's State or designated field office.

Dated: March 28, 2002.

James C. Alsop,

Acting Administrator, Rural Housing Service.

[FR Doc. 02–8181 Filed 4–3–02; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, April 12, 2002, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 8, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Colorado, Kansas and Louisiana, and the Approval of SAC Chairs for the District of Columbia and Washington State.
VI. State Advisory Committee Report: Racism's Frontier: The Untold Story of Discrimination and Division in Alaska
VII. Future Agenda Items
10:30 a.m. A Briefing on the Reauthorization of the IDEA

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–8349 Filed 4–2–02; 3:31 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

DATES: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Stephen Bailey and Brandon Farlander at 202–482–1102 and 202–482–0182 respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 C.F.R. part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On February 12, 2002, the Department issued its final determination in the antidumping duty investigation of automotive replacement glass (''ARG'') windshields from the People's Republic of China (''PRC''). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China,* 67 FR 6482 (February 12, 2002). On March 6, 2002, the Department issued its amended final determination in the antidumping duty investigation of ARG windshields from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China,* 67 FR 11670 (March 15, 2002) (Amended Final Determination). In the Amended Final Determination, the Department amended the weight-average margins for Fuyao Glass Industry Group Company, Ltd. (''FYG''), Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''), Shenzhen Benxun Auto-Glass Co., Ltd. (''Benxun''), Changchun Pilkington Safety Glass Co., Ltd. (''Changchun''), Guilin Pilkington Safety Glass Co., Ltd. (''Guilin''), Wuhan Yaohua Pilkington Safety Glass Co., Ltd. (''Wuhan''), and TCG International (''TCGI'').

On March 21, 2002, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of ARG windshields from the PRC.

Scope of the Investigation

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, *etc.*) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department is directing Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of ARG windshields from the PRC. The antidumping duties will be assessed on all unliquidated

entries of ARG windshields from the PRC entered, or withdrawn from warehouse, for consumption on or after September 19, 2001, the date on which the Department published its notice of preliminary determination in the Federal Register. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China,* 66 FR 48233 (September 19, 2001). On or after the date of publication of this notice in the Federal Register, customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The ''All Others'' rate applies to all exporters of subject merchandise from the PRC. The weighted-average dumping margins are as follows:

AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS

Producer/Manufacturer/Exporter	Weighted-Average Margin
FYG	11.80%
Xinyi	3.71%
Benxun	9.84%
Changchun	9.84%
Guilin	9.84%
Wuhan	9.84%
TCGI	9.84%
China-Wide	124.50%

This notice constitutes the antidumping duty order with respect to ARG windshields from the PRC. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Department of Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: March 29, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8166 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Administrative Review of Certain In-Shell Raw Pistachios from Iran: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398, or Donna Kinsella at (202) 482–0194, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On August 20, 2001, the Department published the Notice of Initiation of Administrative Review of the Antidumping Duty Order on Certain In–Shell Raw Pistachios from Iran, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

The instant administrative review involves several complex issues that necessitate a greater amount of time in order to preliminarily complete this review (e.g., exchange rates, selection of comparison market and complex issues surrounding the U.S. sales). Therefore, it is not practicable to complete the preliminary results of this review within the original time limits mandated by section 751 (a)(3)(A) of the Act. The Department is extending the time limit for completion of the preliminary results by 120 days, until July 31, 2002.

This extension of the time limit is in accordance with section 751 (a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: March 27, 2002

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–8164 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Review for the period February 1, 2001, through January 31, 2002.

EFFECTIVE DATE: April 4, 2002.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 C.F.R. 351.214(d), we are initiating a review for Guangxi Yulin Oriental Food

Co., Ltd., Shenzhen Qunxingyuan Trading Co., Ltd., and Zhangzhou Jingxiang Foods Co., Ltd.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1766.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to 19 C.F.R. Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin''), Shenzhen Qunxingyuan Trading Co., Ltd. (''Shenzhen Qunxingyuan''), and Zhangzhou Jingxiang Foods Co., Ltd. (''Zhangzhou Jingxiang''), in accordance with 19 C.F.R. 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''), which has a February anniversary month.

As required by 19 C.F.R. 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported certain preserved mushrooms during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, pursuant to the requirements of 19 C.F.R. 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 C.F.R. 351.214(b)(2)(iv)(A), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 C.F.R. 351.214(b), and based on information on the record, we are initiating a new shipper review for Guangxi Yulin, Shenzhen Qunxingyuan and Zhangzhou Jingxiang.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 C.F.R. 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. In March 2002, each company listed above agreed to waive the normal time limit for the new shipper review in order that the Department, pursuant to 19 C.F.R. 351.214(j)(3), may conduct this review concurrent with the third annual administrative review of this order. The period of review for the third annual administrative review is February 1, 2000–January 31, 2001, which is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the preliminary results of this new shipper review not later than 245 days after the last day of the anniversary month.

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
Guangxi Yulin Oriental Food Co., Ltd.	02/01/01 – 01/31/02
Shenzhen Qunxingyuan Trading Co., Ltd.	02/01/01 – 01/31/02
Zhangzhou Jiangxiang Foods, Co., Ltd.	02/01/01 – 01/31/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above–listed companies. This action is in accordance with 19 C.F.R. 351.214(e).

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 C.F.R. 351.214(d).

Dated: March 29, 2002

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–8163 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2001 through December 31, 2001. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period October 1, 2001 through December 31, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.10	$0.10
Belgium	EU Restitution Payments	0.03	0.03
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22
Denmark	EU Restitution Payments	0.05	0.05
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.09	0.09
Germany	EU Restitution Payments	0.06	0.06
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.04	0.04
Italy	EU Restitution Payments	0.03	0.03
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.03	0.03
Norway	Indirect (Milk) Subsidy	0.28	0.28
	Consumer Subsidy	0.13	0.13
Total		0.41	0.41
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.02	0.02
Switzerland	Deficiency Payments	0.06	0.06
U.K.	EU Restitution Payments	0.04	0.04

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–8165 Filed 4–3–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On March 27, 2002, Veg Gro Sales, Inc. (a.k.a. K&M Produce Distributors Inc.); Red Zoo Marketing (a.k.a. Performance Produce Limited); Mastronardi Produce Limited; J–D Marketing Inc.; and all Ontario companies subject to the ''all others'' rate filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request on behalf of BC Hot House Foods, Inc. was filed on the same date. Panel review was requested of the final results of the final Determination of Sales at Less Than Fair Value respecting Greenhouse Tomatoes From Canada made by the United States International Trade Administration. These determinations were published in the **Federal Register**, (67 FR 8781) on February 26, 2002. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–04 to these requests.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 27, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30

days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 26, 2002);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 13, 2002); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 28, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–8170 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On March 27, 2002 the NAFTA Panel issued its decision in the matter of Pure Magnesium and Alloy Magnesium from Canada, Full Sunset Reviews of Countervailing Duty Orders, Secretariat File No. USA–CDA–00–1904–07.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information

On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of Full Sunset Reviews of CVD orders made by the International Trade Administration respecting Pure Magnesium and Alloy Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41,444). The request was assigned File No. USA–CDA–00–1904–07.

Panel Decision

The Panel remanded this matter back to the Department to reconsider (i) the determination to utilize the results of the sixth review as the subsidy rate to be reported to the ITC; (ii) the basis for the all others rate; and (iii) the reasons for the failure to investigate subsidies alleged to have been received by Magnola.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within sixty (60) days of the date of the Order (not later than May 27, 2002).

Dated: March 29, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–8169 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On March 27, 2002 the NAFTA Panel issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–06.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information

On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41,436). The request was assigned File No. USA–CDA–00–1904–06.

Panel Decision

The Panel remanded this matter back to the Department to reconsider (1) the GOC's claims regarding ''good cause'' under the standards set forth in Section 752(c)(2) of the statute; and (2) the determination to report the investigation rate as the margin of dumping likely to prevail if the order is revoked.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within sixty (60) days of the date of the Order (not later than May 27, 2002).

Dated: March 29, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–8168 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–61–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Public User ID Badging (formerly Public Search Room Badging).

Form Number(s): PTO–2030.

Agency Approval Number: 0651–0041.

Type of Request: Extension of a currently approved collection.

Burden: 1,076 hours annually.

Number of Respondents: 9,360 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately five minutes to gather the necessary information, prepare the form, and submit the completed application for a Public User ID or to renew or replace a Public User ID badge, and approximately ten minutes to supply any optional information to the USPTO staff, have the photograph taken, and be issued a Public User ID badge.

Needs and Uses: This information collection supports the Public User ID system used to manage the public's access to the Public Search Facilities and other office areas of the USPTO. In order to maintain the patent and trademark search facilities so that the information is available to the public, the USPTO uses an electronic badging system to issue plastic ID badges with a color photograph of the user, a user number, and an expiration date. The public uses this collection to request, renew, or replace a Public User ID badge in order to access the search facilities, its services, and other office areas of the USPTO. The USPTO uses this collection to identify the status of any existing badges for the user, update user information, and track the use of USPTO facilities and services.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the federal government, and state, local, or tribal governments.

Frequency: On occasion and annually for renewals.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before May 6, 2002, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: March 27, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–8098 Filed 4–3–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Federal Acquisition Regulation; Submission for OMB Review; Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning report of shipment. A request for public comments was published in the **Federal Register** at 67 FR 6233, on February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 6, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Respondents: 250.
Responses Per Respondent: 4.
Annual Responses: 1,000.
Hours Per Response: .167.
Total Burden Hours: 167.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056,

Report of Shipment, in all correspondence.

Dated: March 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8159 Filed 4–3–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059]

Federal Acquisition Regulation; Submission for OMB Review; North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina sales tax certification. A request for public comments was published at 67 FR 6237, on February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 6, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Respondents: 424.
Responses Per Respondent: 1.
Annual Responses: 424.
Hours Per Response: .17.
Total Burden Hours: 72.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: March 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–8160 Filed 4–3–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army; DoD.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates: May 21, 2002 (Partially closed meeting). May 22, 2002 (Open meeting).

Times: 7:30 a.m.–4:30 p.m. (May 21, 2002). 7:30 a.m. 1 p.m. (May 22, 2002).

Location: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd, Gaithersburg, MD 20878.

Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session, and to have a classified AFEB update on the DoD Immunization Program for Biological Warfare Defense in accordance with DoD Directive 6205.3.

FOR FURTHER INFORMATION CONTACT: Lt Col James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: This meeting will be partially closed to the public on May 21st. Open sessions of the meeting will be limited by space accommodations. The meeting on May 22nd will be open to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8177 Filed 4–3–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Programmatic Supplemental Environmental Impact Statement for the Louisiana Coastal Area, Louisiana—Comprehensive Coastwide Ecosystem Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers, New Orleans District (Corps) intends to prepare a draft programmatic supplemental environmental impact statement (PSEIS) for the Louisiana Coastal Area, Louisiana—Comprehensive Coastwide Ecosystem Restoration Feasibility Study (hereinafter LCA Comprehensive Study). The LCA Comprehensive Study will build on the restoration strategies presented in the Coast 2050 Plan and the May 1999, 905(b) Reconnaissance Report ''Section 905(b) (WRDA 86) Analysis Louisiana Coastal Area, Louisiana—Ecosystem Restoration.'' The expected outcome of the LCA Comprehensive Study is the identification of restoration projects that would result in sustaining a coastal ecosystem that supports and protects the environment, economy and culture of southern Louisiana and that contributes greatly to the economy and well being of the nation. More than a million acres of Louisiana coastal wetlands have been lost within the last 60 years with current estimates of the Louisiana coastal land loss rate ranging between 25 and 30 square miles per annually (16,000 to 19,000 acres), or about one football field every 25 minutes. Louisiana contains about 40 percent of the wetlands in the United States; yet, nearly 80 percent of all coastal land loss in the lower 48 states today is occurring within Louisiana. Even with current restoration efforts, Louisiana is projected to lose nearly 400,000 acres of marsh and 232,000 acres of swamp by the year 2050, an area the size of Rhode Island.

The LCA Comprehensive Study will supplement previous NEPA-compliance studies, combining the ''lessons learned'' from previous Louisiana coastal wetlands restoration efforts, and determine the feasibility of developing the existing Coast 2050 restoration strategies into projects for the creation of a programmatic, coast-wide, ecosystem restoration plan. The LCA Comprehensive Study is envisioned as the next step in the natural progression and evolution in our efforts to address the problems and determine opportunities for the adaptive environmental assessment and restoration of the coastal wetlands of Louisiana.

FOR FURTHER INFORMATION CONTACT: Questions regarding the PSEIS may be directed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2540 or fax (504) 862–2572. Questions regarding the proposed action should be directed to the study manager, Mr. Troy Constance, CEMVN–PM–W, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–2742 or fax: (504) 862–1892.

SUPPLEMENTAL INFORMATION:

1. Authority

This study is authorized through Resolutions of the U.S. House of Representatives and Senate Committees on Public Works, October 19, 1967 and April 19, 1967.

2. Proposed Action

Building on the Coast 2050 Plan and the May 1999, 905(b) Reconnaissance Report, the Corps proposes to prepare a PSEIS for the LCA Comprehensive Study. The proposed action would assess, at a feasibility programmatic-level, coastal restoration projects that would sustain a coastal ecosystem that supports and protects the environment, economy and culture of Southern Louisiana and that contributes greatly to the economy and well being of the nation. The LCA Comprehensive Study will supplement previous NEPA documents, combining the ''lessons learned'' from previous Louisiana coastal wetlands restoration efforts, and develop the existing Coast 2050 restoration strategies into projects for the creation of a programmatic, coast-wide, ecosystem restoration plan.

In December 1998 the Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Wetlands Conservation Authority (constituted under Act 6 R.S. 49:213.1 *et seq.*) prepared and adopted the Coast 2050 Plan as their official restoration plan. The December 1998 report ''Coast 2050: Toward a Sustainable Coastal Louisiana'', also known as the ''Coast 2050 Plan'', was developed in recognition of the need for a single comprehensive plan for restoration and sustainability of the Louisiana coastal area. The Coast 2050 Plan, which has been recognized by the state of Louisiana, five Federal agencies, and the local coastal parish governments of Louisiana, serves as the joint coastal restoration plan of the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) and the Louisiana State Wetlands Authority (November 1990, Pub. L. 101–646, Title III).

The LCA Comprehensive Study will assess, at a programmatic feasibility-level, the Coast 2050 Plan. Specifically, the LCA Comprehensive Study will evaluate the restoration strategies identified in the Coast 2050 Plan for each of the four major hydrologic regions of the state, developing those strategies, and selecting plans that best address the ecosystem restoration needs for the entire Louisiana coastal area, while complying with applicable rules, regulations and administration policy.

The purpose of the LCA Comprehensive Study is to determine the feasibility of sustaining a coastal ecosystem that supports and protects the environment, economy and culture of southern Louisiana and that contributes greatly to the economy and well being of the nation. Specifically, the LCA Comprehensive Study will determine the feasibility of achieving the following restoration goals:

1. Sustaining a coastal ecosystem with the essential functions and values of the natural ecosystem;

2. Restoring the ecosystem to the highest practicable acreage of productive and diverse wetlands; and

3. Accomplishing this restoration through an integrated program that has multiple use benefits, benefits not solely for wetlands, but for all the communities, industries and resources of the coast.

4. Developing a comprehensive plan that is coordinated and consistent with other major land use and infrastructure features, particularly with respect to navigation, hurricane protection/flood control, and oil and gas production.

The LCA Comprehensive Study, in addition to conducting a programmatic environmental impact assessment, will supplement the findings from the following NEPA documents:

1. The draft EIS ''Land Loss and Marsh Creation, St. Bernard, Plaquemines and Jefferson Parishes, Louisiana'' (USACE 1990);

2. The EIS titled ''Coastal Wetlands Planning, Protection and Restoration Act Louisiana Coastal Wetlands Restoration Plan'' (La Coastal Wetlands Conservation and Restoration Task Force, 1993); and

3. The ''Programmatic Hydrologic Management Environmental Impact Statement and Appendixes'' (USACE 1996).

Additionally, the LCA Comprehensive Study will utilize and compliment the findings from the following reports and studies:

1. The ''Mississippi and Louisiana Estuarine Areas Reconnaissance Report'' (USACE 1981);

2. The ''Louisiana Coastal Area, Louisiana, Shore and Barrier Island Erosion'' Initial Evaluation Study (USACE 1984);

3. MRC/MVD Task Group Report (USACE 1985);

4. Louisiana Coastal Area-Mississippi River Delta Study Recon (USACE 1990);

5. Louisiana Coastal Area—Ecosystem Restoration, Louisiana reconnaissance report approved May 1999; and

6. Mississippi River Sediment, Nutrient, and Freshwater Redistribution (MRSNFR) Study (USACE 2000).

In the 1970s, studies and plans by state, Federal and other interested parties recognized the coastal land loss problem in Louisiana (*e.g.* Gagliano *et al.* 1972 report ''Environmental Atlas and Multi-use Management Plan for South-Central Louisiana''). Public recognition of not only the environmental importance, but also the economic importance of the rapidly disappearing coastal wetlands in Louisiana prompted an amendment to the Louisiana constitution in 1989: Act 6, LA. R.S. 49:213 *et seq*. Known also known as the Louisiana Coastal Wetlands Conservation, Restoration and Management Act, Act 6 established the Governor's Office of Coastal Activities, the Office of Coastal Restoration Management within the Department of Natural Resources, as well as providing for a dedicated trust fund for coastal wetlands restoration. Act 6 also directs the production of the annual Coastal Wetlands Conservation and Restoration Plan, which provides site-specific project authorization.

Continuing in the evolution of Louisiana coastal restoration efforts, the November 1990, CWPPRA provided the first national mandate addressing the need for restoration of Louisiana's coastal wetlands. The CWPPRA required preparation of a comprehensive restoration plan that would coordinate and integrate coastal wetlands restoration projects to ensure the long-term conservation of coastal wetlands of Louisiana. In addition to development of the restoration plan, the CWPPRA authorizes the construction of wetland protection and restoration projects, via Project Priority Lists, preparation of a wetland conservation plan, and implementation of a feasibility study to consider flow distribution between the Atchafalaya and Mississippi rivers.

Section 303(b) of the CWPPRA requires preparation of a comprehensive restoration plan. The CWPPRA Main Report and EIS entitled ''Louisiana Coastal Wetlands Restoration Plan'' was prepared by the CWPPRA Task Force and completed in November 1993. Implementation of the November 1990 CWPPRA has provided the primary experiential basis for coastal restoration experiences across the Louisiana coast.

The CWPPRA provides an annual $5 million (approximately) for planning and $33 million (approximately) for the construction of restoration projects that are typically small in scale and site-specific rather than ecosystem level restoration efforts. Over the past 10 years the CWPPRA, with the completion of the 11th Priority Project List in 2001, has authorized a total of 125 projects. When constructed, all of the projects, to date, would create, restore, protect, or enhance approximately 105,000 acres at a cost of approximately $496 million dollars. Despite the acres gained by implementation of the CWPPRA-funded projects, these acres and those preserved by the existing freshwater diversions from the Mississippi River would prevent only about 25–30 percent of the predicted future marsh loss in Louisiana. There continues to be a need for an adaptive assessment and restoration effort of coastal Louisiana at the ecosystem level which will require significantly greater funding than was conceptualized and is authorized for the CWPPRA because the state continues to suffer a net loss of ranging between approximately 25 to 30 square miles of coastal wetlands per year.

In recognition of the need for a single, coast-wide restoration plan, the Coast 2050 Plan was developed and is described in the December 1998 ''Coast 2050: Towards a Sustainable Coastal Louisiana.'' The Coast 2050 Plan developed as an outgrowth of lessons learned during implementation of restoration projects under the CWPPRA. The Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Wetlands Conservation Authority prepared and adopted the Coast 2050 Plan as their official restoration plan. The Coast 2050 Plan was provided to the U.S. Department of Commerce by the State of Louisiana to incorporate it into the Louisiana Coastal Resources Program Guidelines. In addition, the Coast 2050 Plan was affirmed by resolutions of support from the local coastal parish governments. The Coast 2050 Plan was used as a basis to produce the May 1999, Reconnaissance Report ''Section 905(b) (WRDA 86) Analysis Louisiana Coastal Area, Louisiana—Ecosystem Restoration,'' recommending that the strategies contained within the Coast 2050 Plan proceed to feasibility level analysis.

The LCA Comprehensive Study will supplement previous NEPA documents and utilize and compliment previous reports and studies (as described above), combining the ''lessons learned'' from these efforts and developing the existing restoration strategies into projects for the creation of a programmatic, coast-wide, ecosystem restoration plan. The LCA Comprehensive Study is the next step in the natural progression and evolution in our understanding and efforts to address the problems and determine opportunities for the adaptive environmental assessment and restoration of the coastal wetlands of Louisiana.

3. Need for the Study

The 905(b) Reconnaissance Report recommended that the Coast 2050 plan proceed to the feasibility phase, contingent upon the execution of a Feasibility Cost Sharing Agreement (FCSA) with a non-Federal Sponsor. An FCSA was executed with the Louisiana Department of Natural Resources on February 17, 2000 and amended on March 14, 2002.

The 905(b) Reconnaissance Report estimates that more than a million acres of Louisiana coastal wetlands have been lost within the last 60 years and the current land loss rate ranges between 25 and 30 square miles per annually (16,000 to 19,000 acres), or about one football field every 25 minutes. This accounts for nearly 80 percent of all coastal land loss in the lower 48 states today. The 905(b) Reconnaissance Report concludes that even with current restoration efforts, Louisiana is projected to lose nearly 400,000 acres of marsh and 232,000 acres of swamp by the year 2050, an area the size of Rhode Island.

In February 2002, the Governor's Committee on the Future of Coastal Louisiana (COFCL) prepared a report, ''Saving Coastal Louisiana: Recommendations for Implementing an Expanded Coastal Restoration Program,'' which provided recommendations as a starting point for a renewed and expanded coastal restoration effort. The COFCL report characterizes Louisiana's land loss crisis as an emergency of untold cost to the state of Louisiana and the nation that must be confronted now, with all available resources. The devastation of the coastal land loss will, according to the COFCL report, directly affect our nation's security, navigation, energy consumption, and food supply. The COFCL report further elaborates that the potential loss of lives, infrastructure, industry, ecosystems and culture cannot be overstated.

4. Study Alternatives

During the Coast 2050 public meetings conducted in 1998, 83 regional ecosystem restoration strategies were developed. In January 2001, these strategies were revised into 88 regional ecosystem restoration strategies. The

LCA Comprehensive Study will develop these strategies into features that will be developed further into an array of alternatives that consist of projects. Other restoration alternatives that will be considered include the No Action Alternative, as well as strategies suggested during the scoping process. Alternatives will be evaluated to ensure compliance with current Federal and state laws and regulations. Potential adverse effects of strategies will be identified and recommendations for mitigation measures, if appropriate, will be suggested. A programmatic supplemental EIS is being prepared because of the potential for significant direct and indirect, secondary and cumulative impacts on the human and natural environment.

5. Scoping Process

The Council on Environmental Quality (CEQ) regulations implementing the NEPA direct federal agencies which have made a decision to prepare an environmental impact statement to engage in a public scoping process. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the draft environmental impact assessment, which in this case is a PSEIS. Scoping is the process used to: (a) Identify the affected public and agency concerns; (b) facilitate an efficient PSEIS preparation process; (c) define the issues and alternatives that will be examined in detail in the PSEIS; and (d) save time in the overall process by helping to ensure that the draft statements adequately address relevant issues. Scoping is a process, not an event or a meeting. It continues throughout the planning for a PSEIS and may involve meetings, telephone conversations, and/or written comments. (Counsel on Environmental Quality, Memorandum for General Counsel, April 30, 1981).

6. Public Scoping Meetings

In the early spring of 2002, the U.S. Army Corps of Engineers will hold initial public scoping meetings throughout the coastal Louisiana study area. Notices will be mailed to the affected and interested public once the dates and locations of the scoping meetings have been established. The USACE and the local sponsor—the Louisiana Department of Natural Resources, invite NEPA input in writing or in person concerning the scope of the PSEIS, resources to be evaluated, and alternatives to be considered. Federal, state, and local agencies, Indian tribes, and other interested parties can write comments to the Corps using Dr. Klein's mailing address shown above. Comments received as a result of the scoping meetings will be compiled and analyzed; a Scoping Document, summarizing the comments, will be made available to all scoping participants. Additional public meetings will be held and comments accepted throughout the scoping process.

7. Public Involvement

Scoping is a critical component of the overall public involvement program. An intensive public involvement program will be initiated and maintained throughout the study to solicit input from affected Federal, state, and local agencies, Indian tribes, and other interested parties.

8. Interagency Coordination

The Department of the Interior, U.S. Fish and Wildlife Interagency Coordination. The Department of Interior, U.S. Fish and Wildlife Service (USFWS), will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the USFWS and the National Marine Fisheries Service regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the ''Swampbuster'' provisions of the Food Security Act. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Streams.

9. Availability of Draft PSEIS

It is anticipated that the Draft PSEIS will be available for public review during the late summer of 2003. A 45-day review period will be allowed so that all interested agencies, groups and individuals will have an opportunity to comment on the draft feasibility report and PSEIS. In addition, a public meeting will be held during the review period to receive comments and address questions concerning the draft PSEIS.

Dated: March 20, 2002.

Michel R. Burt,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. 02–8175 Filed 4–3–02; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.310A]

Parental Information and Resource Centers Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority, selection criteria, and eligibility requirements.

SUMMARY: We propose a competitive preference priority, selection criteria, and eligibility requirements for grants for fiscal year (FY) 2002 under the Parental Information and Resource Centers (PIRC) Program. We are taking this action to implement a competition authorized under the No Child Left Behind Act of 2001. These grants would assist eligible parties in establishing school-based or school-linked PIRCs.

DATES: We must receive your comments on the proposed priority, selection criteria, and eligibility requirements May 6, 2002.

ADDRESSES: Address all comments about this proposed priority to Daisy Greenfield, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E307, Washington, DC 20202–6410. Telephone: (202) 401–0039. FAX: (202) 205–0303. If you prefer to send your comments through the Internet, use the following address: *daisy.greenfield@ed.gov.*

If you want to comment on the information collection requirements, you must send your comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Daisy Greenfield, (202) 401–0039.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding the proposed priority, selection criteria, and eligibility requirements. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3E307, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individual With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

General

Subpart 16 of title V of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (No Child Left Behind Act) (Pub. L. 107–110), authorizes the Secretary of Education (Secretary) to award grants to nonprofit organizations and to consortia of nonprofit organizations and local educational agencies (LEAs), to establish school-based and school-linked PIRCs.

The purposes of the program are—

(1) To assist grantees in implementing effective parental involvement policies, programs, and activities that will improve children's academic achievement;

(2) To develop and strengthen partnerships among parents—including parents of children from birth through age five—teachers, principals, administrators, and other school personnel in meeting the educational needs of children;

(3) To develop and strengthen the relationship between parents and their child's school;

(4) To further the developmental progress of children assisted under the program;

(5) To coordinate activities funded under this program with parental involvement initiatives funded under section 1118 and other provisions of the ESEA; and

(6) To provide a comprehensive approach to improving student learning, through coordination and integration of Federal, State, and local services and programs.

Services that we fund under the Parental Information and Resource Centers Program should use up-to-date knowledge from research and effective practices. The proposed project should integrate strategies, methods, and practices that, on the basis of strong evidence of effectiveness, will most likely enhance parental involvement in schools and improve student academic achievement.

Centers funded under this program must be school-based or school-linked and provide comprehensive training, information, and support to (1) parents of children enrolled in elementary and secondary schools; (2) individuals who work with the parents of children enrolled in elementary and secondary schools; (3) State educational agencies (SEAs), LEAs, schools, organizations that support family-school partnerships (such as parent-teacher associations and Parents as Teachers organizations), and other organizations that carry out parent education and family involvement programs; and (4) parents of children from birth through age five.

Each PIRC must serve both urban and rural areas. To assist parents who are severely educationally or economically disadvantaged, a PIRC must use at least 50 percent of the each year's award to serve areas with high concentrations of low-income families.

Compared to previous PIRC legislation in title IV of the Goals 2000: Educate America Act, the No Child Left Behind Act emphasizes support for activities that assist parents in participating effectively in their children's education so that their children will meet State and local academic standards. For example, PIRCs must now assist parents in areas such as understanding State and local standards and measures of student and school academic achievement. They must work with SEAs and LEAs to determine parental needs and the best means for delivery of services. PIRCs may also assist parents in communicating better with teachers, principals, counselors, and other school personnel, and in becoming active participants in the development, implementation, and review of school-parent compacts, parental involvement policies, and school planning and improvement.

PIRCs must now use at least 30 percent of their funds each year to establish, expand, or operate early childhood parent education programs, such as Parents as Teachers programs or Home Instruction for Preschool Youngsters programs. PIRCs must also support one or more of the specific activities listed in section 5564(a) of the ESEA and may also assist schools with activities listed in section 5564(b).

The new PIRC provisions require the Secretary, to the extent practicable, to ensure that grants are distributed in all regions of the United States. Currently there is a parent center funded under title IV of Goals 2000 in each State, including the District of Columbia, Puerto Rico, and each of the outlying areas. The Secretary will continue to fund those centers for the remainder of their respective project periods. PIRCs in 28 States have one year left in their project periods and, thus, each of those will receive a continuation award from the FY 2002 PIRC funds under the reauthorized ESEA.

PIRCs in the following States are in the last year of their project periods and, therefore, will *not* receive continuation funding: Alabama, Alaska, Arizona, Arkansas, American Samoa, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, the Federated States of Micronesia, Guam, Idaho, Illinois, Indiana, Kansas, Louisiana, Montana, Mississippi, Nebraska, New Mexico, North Dakota, Oregon, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, Rhode Island, South Carolina, U.S. Virgin Islands, Utah, Virginia, West Virginia, and Wyoming.

To comply with Congress' intent that grants be distributed, to the extent practicable, to all regions of the United States, the Secretary proposes to give a competitive preference of 10 additional points to the highest-scoring applicant from each of the States in which the current PIRC projects are ending. This selection process would still permit the Department to fund applications of exceptional quality from any State—whether or not a PIRC in the State received a continuation award from FY 2002 funds—and to fund more than one PIRC in a State if this were warranted.

The Secretary is also proposing specific selection criteria for the FY 2002 competition. The criteria are designed to help ensure that applicants selected for grants are those that (1) propose activities that best address the statutory purposes and requirements, (2) can effectively implement those activities, and (3) are likely to be successful in improving student and school academic achievement.

Both the predecessor and current PIRC legislation require that grants be made to nonprofit organizations, or to consortia of nonprofit organizations and LEAs. The organization or consortium must be governed by a board of directors whose membership includes parents, or be an entity that represents the interests of parents. Under the Department's

interpretation of the predecessor legislation, the term ''nonprofit organization'' for purposes of the PIRC program did not include institutions of higher education, State educational agencies, local educational agencies, intermediate school districts, schools, government entities, or hospitals. Given the statutory language concerning the governance and purposes of the PIRCs, we believe that this is also the proper interpretation of the term ''nonprofit organization'' under the new PIRC legislation.

After considering the responses to this notice and other information available to the Department, we will announce in a notice in the **Federal Register** the final priority, selection criteria, and eligibility requirements under this competition for FY 2002.

Note: This notice does not solicit applications. A notice inviting applications under the competition will be published in the **Federal Register** concurrent with or following the notice of final priority, selection criteria, and eligibility requirements.

Priority

We propose to give a competitive preference under the PIRC competition to any applicant that—

(1) Is from one of the following States: Alabama, Alaska, Arizona, Arkansas, American Samoa, Commonwealth of the Northern Mariana Islands, Connecticut, Delaware, the Federated States of Micronesia, Guam, Idaho, Illinois, Indiana, Kansas, Louisiana, Montana, Mississippi, Nebraska, New Mexico, North Dakota, Oregon, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, Rhode Island, South Carolina, U.S. Virgin Islands, Utah, Virginia, West Virginia, and Wyoming; and

(2) Is the highest-scoring applicant from its State on the basis of the selection criteria for the competition.

We would award 10 points to any applicant that meets the priority. These points would be in addition to any points the applicant earns under the selection criteria.

Selection Criteria

We propose that we use the following selection criteria to evaluate applications under the PIRC competition. The maximum points for each criterion is indicated in parentheses after the heading for that criterion.

(a) *Need for the project* (20)

In evaluating the need for the proposed project, we consider the extent to which—

(1) The proposed project will provide services to or otherwise address the needs of parents who are educationally or economically disadvantaged;

(2) The training, information, and support services currently available inadequately address the needs of the parents the proposed project will serve; and

(3) The children of the parents the proposed project will serve are not meeting State or local academic achievement standards.

(b) *Quality of the design of the proposed PIRC* (25)

In evaluating the quality of the design of the proposed PIRC, we consider the extent to which—

(1) The proposed PIRC will be a school-based or school-linked center of adequate size, scope, and quality to serve effectively the parents in the area;

(2) The proposed PIRC is designed to work in coordination with the SEA and affected LEAs (i) in determining the needs of the parents who will be targeted for assistance; and (ii) in developing an effective means for providing services to those parents;

(3) The proposed PIRC is designed to coordinate and integrate activities funded under this grant with parental involvement activities funded from other sources, particularly title I of the Elementary and Secondary Education Act, as amended, and the Individuals with Disabilities Education Act;

(4) The proposed PIRC will support effective early childhood parent education programs that will enhance school readiness;

(5) The proposed project includes multiple strategies for providing direct and indirect services for parents targeted for assistance; and

(6) The proposed PIRC will implement a management plan that includes clearly defined responsibilities, timelines, and milestones for meeting the purposes of the program as defined in section 5661 of the legislation.

(c) *Quality of the services* (20)

In evaluating the quality of the services to be provided by the proposed PIRC, we consider—

(1) The quality and sufficiency of strategies for ensuring equal access by, and treatment of eligible project participants who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability; and

(2) The extent to which the proposed PIRC will—

(i) Provide comprehensive training, information, and support services to develop and strengthen the relationship between parents and their child's school;

(ii) Assist parents in understanding the student academic achievement standards to which their child is being held and the measures of student and school academic achievement;

(iii) Assist parents in becoming involved in their child's education in meaningful ways that are likely to improve the child's academic achievement;

(iv) Provide services that reflect up-to-date knowledge from research and effective practices; and

(v) Provide to parents services that will likely improve the developmental progress of children, including children from birth through age five.

(d) *Quality of the PIRC personnel* (10)

In evaluating the quality of the personnel who will carry out the PIRC activities, we consider—

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability;

(2) The qualifications, including relevant training and experience, of the PIRC director;

(3) The qualifications, including relevant training and experience, of key PIRC personnel; and

(4) The qualifications, including relevant training and experience, of PIRC consultants or subcontractors.

(e) *Evaluation* (25)

In evaluating the quality of the evaluation the applicant proposes to conduct of the proposed project, we consider the extent to which the methods of evaluation—

(1) Are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(2) Produce quantitative and qualitative data; and

(3) Will result in data on whether the policies and practices of the PIRC are effective in improving home-school communication, student academic achievement, school academic achievement, and parental involvement in school planning, review, and improvement.

Eligibility Requirements

We propose that organizations seeking funding under the PIRC Program, either individually or in consortia with one or more LEAs, be required to demonstrate that they are nonprofit organizations under section 501(c)(3) of the Internal Revenue Code.

We also propose, for purposes of the PIRC Program, that the term ''nonprofit

organization'' not include institutions of higher education, State educational agencies, local educational agencies, intermediate school districts, schools, government entities, or hospitals.

Executive Order 12866

This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

It is not anticipated that the requirements proposed in this notice will impose any significant costs on applicants. Since these regulations provide a basis for the Secretary to implement a competitive grant program that would assist grantees to establish school-based or school-linked PIRCs, the regulations would not impose any unfunded mandates on States or LEAs. The benefits of the program are described in the **General** section under **SUPPLEMENTARY INFORMATION** in this notice.

Regulatory Flexibility Act

The Secretary certifies that the requirements in this notice will not have a significant economic impact on a substantial number of small entities. The small entities affected would be small nonprofit organizations and small LEAs. The requirements proposed in this notice are minimal and are necessary to ensure effective program management. They will not have a significant economic impact on any program applicants.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. Although we do not believe these proposed regulations would have federalism implications as defined in Executive Order 13132, we encourage State and local elected officials to review them and to provide comments.

Paperwork Reduction Act of 1995

This document contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this document and the information collection to the Office of Management and Budget (OMB) for its review.

If you want to comment on the information collection requirements, please send your comments to the Department representative listed under **FOR FURTHER INFORMATION CONTACT.**

OMB is required to make a decision concerning the collection of information in this document between 30 and 60 days after publication in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed priority, selection criteria, and eligibility requirements.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Subpart 16 of title V of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Dated: March 29, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–8087 Filed 4–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.360]

School Dropout Prevention Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: To support effective, sustainable, and coordinated school dropout prevention and reentry programs in high schools with annual school dropout rates greater than the State average annual school dropout rate and in the middle schools that feed students into these high schools.

Eligible Applicants: State educational agencies (SEAs) and local educational agencies (LEAs).

Applications Available: April 4, 2002.

Deadline for Transmittal of Applications: May 20, 2002.

Deadline for Intergovernmental Review: July 18, 2002.

Notification of Intent To Apply for Funding: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding. Therefore, we strongly encourage each potential applicant to send, by May 6, 2002, a notification of its intent to apply for funding to the following address: *dropoutprevention@ed.gov.*

The notification of intent to apply for funding is *optional* and should not include information regarding the proposed application. Eligible applicants that fail to provide the notification may still submit an application by the application deadline.

Estimated Available Funds: $9,000,000.

Estimated Annual Range of Awards: $200,000–$500,000.

Funding of continuation awards after the initial year of funding depends on future Congressional appropriations for the program. The Administration has not requested funding for this program in its fiscal year 2003 budget proposal.

Estimated Number of Awards: 15–20.

These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

SUPPLEMENTARY INFORMATION:

Description of the Program

The School Dropout Prevention program, authorized under part H of title I of the Elementary and Secondary Education Act, as amended, supports effective, sustainable, and coordinated school dropout prevention and reentry programs in high schools with annual school dropout rates greater than the State average annual school dropout rate and in the middle schools that feed students into these high schools.

Each grant recipient must implement dropout prevention and reentry strategies that are scientifically based, are sustainable, and have been widely replicated. These strategies may include—

(1) Specific strategies for targeted purposes, such as—

(a) Effective early intervention programs designed to identify at-risk students;

(b) Effective programs serving at-risk students, including racial and ethnic minorities and pregnant and parenting teenagers, designed to prevent these students from dropping out of school; and

(c) Effective programs to identify youth who have already dropped out of school and encourage them to reenter school and complete their secondary education; and

(2) Approaches such as breaking larger schools into smaller learning communities and other comprehensive reform approaches, creating alternative school programs, and developing clear linkages from schools to career skills and employment.

Applications

We strongly encourage you to submit your application to us electronically. Submission of an electronic application involves the use of the Electronic Grant Application System (e-**APPLICATION**, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). However, you may submit your application in paper format if you prefer.

You can access the electronic application for the School Dropout Prevention program at: *http://e-grants.ed.gov.*

You may also obtain a copy of the application package from the contact person identified under **FOR FURTHER INFORMATION CONTACT**.

Waiver of Proposed Rulemaking

Some of the procedures in these instructions for transmitting applications differ from those EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

FOR FURTHER INFORMATION CONTACT: Christine Jackson, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2W104, FOB–6, Washington, DC 20202–6254. Telephone: (202) 260–2516 or via Internet: *christine.jackson@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

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Program Authority: 20 U.S.C. 6551 *et seq.*

Dated: March 29, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–8088 Filed 4–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Commission on Excellence in Special Education; Notice of Meeting

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of public meeting.

SUMMARY: The Assistant Secretary announces a meeting of the President's Commission on Excellence in Special Education (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: April 9–10, 2002.

Time: 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, 50 Alambra Plaza, Coral Gables, Florida.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, or Troy R. Justesen, Deputy Executive Director, at (202) 208–1312. The fax number is (202) 208–1593 and e-mail address is *troy.justesen@ed.gov* or via the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/whspecialeducation/site map.html.*

SUPPLEMENTARY INFORMATION: The Commission is established under Executive Order 13227 dated October 2, 2001. The Commission's function is to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Troy R. Justesen, at (202) 219—0704, as soon as possible. Sign language interpreter services will be provided at all meetings. The meeting site will be

accessible to individuals with mobility impairments, including those who use wheelchairs.

On Tuesday, April 9th, there will be an opportunity beginning at 7 a.m. for the public to register for a public comment period. The Commission will be addressed on options for parental involvement in special education. There will be question and answer periods for the commissioners and a guest speaker presentation. On Wednesday, April 10, the commissioners will continue discussion on the subject of perspectives of parents and educators serving children with disabilities, a case study of the importance of leadership at the school-level in serving children at-risk of academic failure, and a continuation of discussion on options for parental involvement in special education.

Records are kept of all Commission proceedings, and are available for public inspection at President's Commission on Excellence in Special Education, 80 F Street, NW., Suite 408, Washington, DC 20208 from the hours of 9 a.m. to 5 p.m. (EST). This notice will not meet the 15-day FACA requirement for announcing meetings in the **Federal Register** however a previous notice was printed indicating the date of the upcoming meeting. The notice gives the public more information about the agenda and actual location of the meeting that was not available at the first printing.

Electronic Access to This Document

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Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Service.

[FR Doc. 02–8114 Filed 4–3–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–725–000, ER02–725–001]

Great Plains Power Inc.; Notice of Issuance of Order

March 29, 2002.

Great Plains Power Inc. (GPP) submitted for filing a rate schedule under which GPP will engage in the sales of capacity, energy and certain ancillary services at market-based rates and for the reassignment of transmission capacity. GPP also requested waiver of various Commission regulations. In particular, GPP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by GPP.

On March 27, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GPP 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).

Absent a request to be heard in opposition within this period, GPP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GPP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 26, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions 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.,

Deputy Secretary

[FR Doc. 02–8129 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1213–000]

Mirant Energy Trading, L.L.C.; Notice of Issuance of Order

March 29, 2002.

Mirant Energy Trading, L.L.C. (MET) submitted for filing a rate schedule under which MET will engage in the sales of capacity, energy and certain ancillary services at market-based rates and for the reassignment of transmission capacity. MET also requested waiver of various Commission regulations. In particular, MET requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by MET.

On March 28, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by MET 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).

Absent a request to be heard in opposition within this period, MET is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MET, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of MET's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 29, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions 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.,

Deputy Secretary.

[FR Doc. 02–8130 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–57–000, et al.]

Public Service Company of New Mexico, et al.; Electric Rate and Corporate Regulation Filings

March 28, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Public Service Company of New Mexico

[Docket No. EC02–57–000]

Take notice that on March 25, 2002, Public Service Company of New Mexico (PNM) submitted for filing an application under section 203 of the Federal Power Act for approval of the disposition to Navopache Electric Cooperative, Inc. (Navopache) of PNM's interest in the Coronado Generating Station Switchyard 500/69 kV transformer, substation equipment, and associated communications equipment.

Comment Date: April 15, 2002.

2. Perryville Energy Partners, L.L.C.

[Docket No. EC02–58–000]

Take notice that on March 26, 2002, Perryville Energy Partners, L.L.C. (PEP), (on behalf of Perryville Energy Holdings LLC (''PEH'') and Cleco Midstream Resources LLC (Midstream) and Mirant Perryville Investments, Inc. (''MPI'') filed with the Commission an Application pursuant to Section 203 of the Federal Power Act for a transaction of a disposition of jurisdictional facilities whereby MPI would transfer all of the membership interests it holds in PEP to PEH through an Equity Purchase Agreement.

Comment Date: April 16, 2002.

3. Central Main Power Company

[Docket No. ER01–2032–002]

Take notice that on March 18, 2002, Central Main Power Company (CMP) filed with the Federal Energy Regulatory Commission (Commission) a compliance report describing the settlement agreement between CMP and Calpine Construction Finance Company, L.P., that resolved all disputed issued.

Comment Date: April 12, 2002.

4. International Transmission Company

[Docket No. ER02–1382–000]

Take notice that on March 26, 2002, International Transmission Company (International Transmission) tendered for filing pursuant to Section 205 of the Federal Power Act, certain late-filed transmission service agreements for the provision of network integration transmission service under the Joint Open Access Transmission Tariff between International Transmission and Michigan Electric Transmission Company to the following customers: University of Michigan and Engage Energy America LLC.

Comment Date: April 16, 2002.

5. Southern California Edison Company

[Docket No. ER02–1383–000]

Take notice that on March 26, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and Whitewater Energy Corporation (Whitewater). The Letter Agreement specifies the terms and conditions under which SCE will begin construction of the interconnection facilities necessary to interconnect the Whitewater project to SCE's distribution system.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Whitewater.

Comment Date: April 16, 2002.

6. Puget Sound Energy, Inc.

[Docket No. ER02–1384–000]

Take notice that on March 26, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Firm Point-To-Point Transmission Service and a service agreement for Non-Firm Point-To-Point Transmission Service with RWE Trading Americas Inc. (RWE), as Transmission Customer. A copy of the filing was served upon RWE.

Comment Date: April 16, 2002.

7. Duke Electric Transmission

[Docket No. ER02–1385–000]

Take notice that on March 26, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Duke Power, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on April 1, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's Regulations, 18 CFR Pt. 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: April 16, 2002.

8. Duke Electric Transmission

[Docket No. ER02–1386–000]

Take notice that on March 26, 2002, Duke Electric Transmission (Duke), a division of Duke Energy Corporation, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Duke Power, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on April 1, 2002. Duke states that this filing is in accordance with Part 35 of the Commission's Regulations, 18 CFR 35, and that a copy has been served on the North Carolina Utilities Commission.

Comment Date: April 16, 2002.

9. Entergy Services, Inc.

[Docket No. ER02–1387–000]

Take notice that on March 26, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with St. Charles Development Company, L.L.C. (Enron St. Charles), and a Generator Imbalance Agreement with Enron St. Charles.

Comment Date: April 16, 2002.

10. Xcel Energy Services, Inc.

[Docket No. ER02–1388–000]

Take notice that on March 26, 2002, Xcel Energy Services, Inc. (XE''), on behalf of Northern States Power Company (Minnesota) (hereinafter NSP), submitted for filing a Second Revision to the Service Schedule A to the Municipal Interconnection and Interchange Agreement between NSP and they City of Melrose.

XES requests that this agreement become effective on January 1, 2002.

Comment Date: April 16, 2002.

11. Xcel Energy Services, Inc.

[Docket No. ER02–1389–000]

Take notice that on March 26, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (Minnesota) (hereinafter NSP), submitted for filing a Second Revision to the Service Schedule A to the Municipal Interconnection and Interchange Agreement between NSP and they City of Fairfax.

XES requests that this agreement become effective on January 1, 2002.

Comment Date: April 16, 2002.

12. Xcel Energy Services, Inc.

[Docket No. ER02–1390–000]

Take notice that on March 26, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (Minnesota) (hereinafter NSP), submitted for filing a Second Revision to the Service Schedule A to the Municipal Interconnection and Interchange Agreement between NSP and they City of Sioux Falls.

XES requests that this agreement become effective on January 1, 2002.

Comment Date: April 16, 2002.

13. Southwest Power Pool, Inc.

[Docket No. ER02–1391–000]

Take notice that on March 26, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d.b.a. Westar Energy (Transmission Customer).

SPP seeks an effective date of March 1, 2002 for this service agreement. The Transmission Customer was served with a copy of this filing.

Comment Date: April 16, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8112 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–384–000 and CP01–387–000]

Islander East Pipeline Company, L.L.C., Algonquin Gas Transmission Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Islander East Pipeline Project

March 29, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Islander East Pipeline Company, L.L.C. (Islander East) and by Algonquin Gas Transmission Company (Algonquin) in the above-referenced dockets.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including system alternatives, major route alternatives, and route variations, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of the following facilities in New Haven County, Connecticut and Suffolk County, New York:

- A new 12,028 horsepower Cheshire Compressor Station north of Cheshire, Connecticut in New Haven County operated by Algonquin;
- The removal of two launchers from an existing Algonquin mainline valve and interconnect facility northeast of Cheshire, Connecticut by Algonquin;
- Retest and upgrade along the C–1 and C–lL lines of about 27.4 miles of existing Algonquin mainline from Cheshire Compressor Station to North Haven, Connecticut;
- An anomaly investigation along the C–1 lines of about 0.1 mile of existing Algonquin mainline from Cheshire Compressor Station to North Haven, Connecticut;
- About 44.8 miles of new 24-inch-diameter Islander East Pipeline from the North Haven Meter Station just south of North Haven, Connecticut;
- About 5.6 miles of new 24-inch diameter pipeline (the Calverton Lateral) from the Islander East Pipeline near Wading River, New York, through the Towns of Brookhaven and Riverhead, New York to a planned power plant in Calverton, New York;
- A new meter station within the North Haven Meter Station Site, just south of North Haven, Connecticut;
- A new meter station in Brookhaven, New York and in Calverton, New York at the terminus of the Islander East Pipeline and the Calverton Lateral, respectively; and
- Five new mainline valves along the proposed pipeline route (two in Connecticut and three in New York).

The purpose of the Islander East Pipeline Project is to provide transportation service for 285,000 dekatherms per day of natural gas from supply areas in the northeast United States to energy markets in Connecticut; and Long Island and New York City, New York.

Specific Comment Request

Area residents, local or state governments, intervenors, and other interested parties are asked to provide specific comments on whether the following alternatives and variations are reasonable and practicable and environmentally preferable to the proposed facilities. Comments should also address any effect on project timing and related cost/benefits. The staff has identified and evaluated the details of the following system alternatives:

- The *One-Pipe System Alternative,* which combines the volumes for both the Islander East Project and the Iroquois Gas Transmission System, L.P. (Iroquois) Eastern Long Island (ELI) Extension Project (CP02–52–000), in one pipeline. This would be an alternative to building both the ELI Extension Project and the Islander East Project, using the route for the ELI Extension Project with additional modifications. This alternative would transport the

total volume of gas proposed in both projects, about 435,000 Mcf per day;

• The *ELI System Alternative,* which could use the ELI Extension Project instead of the Islander East Project to deliver 260,000 Mcf per day, in the event that the Commission decides that there is a market for only one pipeline to serve eastern Long Island; and

• The *Long Island System Alternative,* which combines both Islander East and the ELI Extension projects in a joint pipeline on Long Island only.

The staff has also examined eight route alternatives and nine other route variations to the proposed facilities. The staff has recommended the use of two of the route variations to minimize impacts on Branford Land Trust property in Connecticut and Core Preservation Areas of the Central Pine Barrens in New York. See section 4 of the DEIS for details on alternatives.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of Gas Branch 2, PJ11.2

• Reference Docket Nos. CP01–384–000 and CP01–387–000; and

• Mail your comments so that they will be received in Washington, DC on or before May 19, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We will announce in a future notice, the location and time of one local public meeting in Connecticut, and one in New York, to receive comments on the DEIS.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8128 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

March 29, 2002.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 11894–001.

c. *Applicant:* Rugraw, Inc.

d. *Name of Project:* Lassen Lodge.

e. *Location:* The proposed Lassen Lodge Hydroelectric Project (Project) is located entirely on the South Fork of Battle Creek in Tehama County, California. No Federal lands would be affected.

f. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

g. *Applicant Contact:* Art Hagood, Project Manager, Synergics Energy Services, 191 Main Street Annapolis, MD 21043; (410) 268–8820; *ahagood@synergics.com*.

h. *FERC Contact:* Kenneth Hogan at (202) 208–0434 or via e-mail at: *Kenneth.Hogan@ferc.gov*.

j. *Deadline for filing scoping comments:* May 28, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping 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's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. The structures proposed for the Lassen Lodge Hydroelectric Project are: (1) a new 5-foot-high, 80-foot-long

reinforced concrete diversion structure; (2) a half-acre reservoir with an operating surface elevation of 4,310 feet mean sea level (msl); (4) an intake structure located at the diversion dam to include trash racks, fish screens, and fish passage facilities; (5) a 19,200-foot-long burried penstock composed of a 42-inch-diameter, 7,200-foot-long, polyethylene section, and a 36 inch diameter, 12,000-foot-long steel section; (6) a powerhouse with an installed generating capacity of approximately 7 megawatts and a maximum hydraulic capacity of 100 cfs; (7) a 10-mile-long 60-kilovolt transmission line; and (8) a 55-foot-long reinforced concrete, box culvert tailrace discharge structure.

l. *Scoping Process*: Rugraw Inc. (Rugraw) intends to utilize the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, Rugraw will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Lassen Lodge Hydroelectric Project.

Rugraw expects to file with the Commission, the APEA and the license application for the project by October 2003.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

Rugraw and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting: Thursday, April 25, 2002, 2 p.m. until concluded, Red Bluff Community Center 1500 South Jackson Road, Red Bluff, CA 96080.

Evening Meeting: Thursday, April 25, 2002, 6 p.m. until concluded, Red Bluff Community Center 1500 South Jackson Road, Red Bluff, CA 96080.

To help focus discussions, Scoping Document 1, prepared by Rugraw in coordination with the California State Water Resources Control Board, was mailed in March 2002, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, Rugraw and the Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Rugraw in defining and clarifying the issues to be addressed in the APEA.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8131 Filed 4–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 29, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Docket No.	Date filed	Presenter or requester
1. Docket No. RM01–12–000, RT01–2–000, *et al*	03–13–02	Commission.[1]
2. Docket No. RM01–12–000, RT01–2–000, *et al*	03–13–02	Commission.[2]
3. Docket No.RM01–12–000, RT01–2–000, *et al*	03–15–02	Commission.[3]
4. Docket No. RM01–12–000, RT01–2–000, *et al*	03–15–02	Commission.[4]
5. Docket No. CP02–45–000	03–25–02	Terry Doyle.
6. Project No. 2342–011	03–27–02	Gloria Young Hartman.
7. Project No. 1354–000	03–28–02	Van Button.

[1] Transcript of Midwest State Commissioners Regional Teleconference on Electricity Market Design and Structure convened 3/13/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al*

[2] Transcript of Southeast State Commissioners Regional Teleconference convened 3/13/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al*

[3] Transcript of Western State Commissioners Regional Teleconference convened 3/15/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al*

[4] Transcript of the Northeast State Commissioners Regional Teleconference convened 3/15/02 pursuant to the Commission's Notice issued 3/1/02 in Docket Nos. RM01–12–000, *et al*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8132 Filed 4–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00765; FRL–6830–8]

Notice of Availability of Regional Pesticide Environmental Stewardship Program (PESP) Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of approximately $497 thousand in fiscal year 2002 grant/cooperative agreement funds under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. This funding is for grants to States and federally recognized Native American Tribes for research, public education, training, monitoring, demonstrations, and studies that advance pesticide risk reduction.

DATES: Applications must be received by the appropriate EPA Regional Office May 27, 2002. EPA will make its award decisions by July 10, 2002.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional PESP Coordinator listed under Unit V.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general but will be of particular interest to eligible applicants who include the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Native American tribes. 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 your EPA Regional PESP Coordinator listed under Unit V.

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 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/. Additional information is available on EPA's PESP website at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm.

2. *By mail or in person*. Contact your EPA Regional PESP Coordinator listed under Unit V.

II. Availability of FY'02 Funds

With this publication, EPA is announcing the availability of approximately $497 thousand in grant/cooperative agreement funds for FY'02. The Agency has delegated grant making authority to the EPA Regional Offices.

III. Eligible Applicants

In accordance with the Act, ''. . . Federal agencies, universities, or others as may be necessary to carry out the purposes of the act, . . .'' are eligible to receive funding. Restrictions on the funds appropriated for this program limit the eligible applicants to the 50 States, District of Columbia, U.S. Virgin Islands, Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Native American Tribes. The term ''State'' in this notice refers to all eligible applicants.

Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. EPA encourages organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. Contact your EPA Regional PESP Coordinator for assistance in identifying and contacting eligible applicants.

IV. Activities and Criteria

A. Activities

The goal of PESP is to reduce the risks associated with pesticide use in agricultural and non-agricultural settings in the United States. The purpose of the grant program is to support projects that address this goal. Pesticide pollution prevention, integrated pest management (IPM), IPM in schools, children's health issues related to pesticides, and those research methods for documenting IPM adoption or the reduction of risks associated with changes in pesticide use will receive priority consideration. Other projects will be considered as they complement these goals through public education, training, monitoring, demonstrations, and other activities.

EPA specifically seeks to build State and local IPM capacities or to evaluate the economic feasibility of new IPM approaches at the state level (i.e., innovative approaches and methodologies that use application or other strategies to reduce the risks associated with pesticide use). State projects might focus on, for example:

- Researching the effectiveness of multimedia communication activities for, including but not limited to: Promoting local IPM activities, providing technical assistance to pesticide users; collecting and analyzing data to target outreach and technical assistance opportunities; developing measures to determine and document progress in pollution prevention; and identifying regulatory and non-regulatory barriers or incentives to pollution prevention.
- Researching methods for establishing IPM as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the ethic within both governmental and non-governmental institutions of the State or region.
- Initiating research or other projects that test and support: innovative techniques for reducing pesticide risk or using pesticides in a way to reduce risk, and innovative application techniques to reduce worker and environmental exposure.

A list of projects funded since FY 1998 may be obtained at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm or from your Regional PESP Coordinator.

B. Criteria

EPA Regional Offices are responsible for the solicitation, screening, and selection of proposals for funding a generic request for proposal will be available on EPA's website on or before April 11, 2002 at http://www.epa.gov/oppbppd1/PESP/regional_grants.htm. Interested applicants must contact the appropriate EPA Regional PESP Coordinator to obtain specific instructions, Regional criteria, guidance, and format for submitting proposals. Proposals will be evaluated based on the following criteria:

1. Qualifications and experience of the applicant relative to the proposed project.

- Does the applicant demonstrate experience in the field of the proposed activity?
- Does the applicant have the properly trained staff, facilities, or infrastructure in place to conduct the project?

2. Consistency of proposal with the risk reduction goals of PESP.

3. Does the project provide for a quantitative or qualitative evaluation of achieving the stated goals.

- Is the project designed in such a way that it is possible to measure and document the results quantitatively and qualitatively?
- Does the applicant identify the method that will be used to measure and document the results quantitatively and qualitatively?

4. Likelihood the project can be replicated to benefit other communities or the product may have broad utility to a widespread audience. Can this project, taking into account typical staff and financial restraints, be replicated by similar organizations in different locations to address the same or similar problem?

C. Program Management

The awarding of FY'02 funds will be managed through the EPA Regional Offices. Quality Assurance/Quality Control plans may be required, depending on the nature of the project and the data collected. Contact your Regional PESP Coordinator for more information about this requirement.

V. Regional PESP Coordinators

Region I (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Andrea Szylvian, 1 Congress St., Suite 1100 (CPT), Boston, MA 02114–2023. Telephone: (617) 918–1198, e-mail: szylvian.andrea@epa.gov.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands)

Tara Masters, Raritan Depot, 2890 Woodbridge Ave (MS-500), Edison, NJ 08837–3679. Telephone: (732) 906–6183, e-mail: masters.tara@epa.gov.

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia)

Fatima El-Abdaoui, 1650 Arch St. (3WC32), Philadelphia, PA 19103–2029. Telephone: (215) 814–2129, e-mail: el-abdaoui.fatima@epa.gov.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Troy Pierce, 61 Forsyth St SW, Atlanta, GA 30303–8960. Telephone: (404) 562–9016, e-mail: pierce.troy@epa.gov.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Heather McDonald, 77 W Jackson Blvd (DT-8J), Chicago, IL 60604-3507. Telephone: (312) 886–3572, e-mail: mcdonald.heather@epa.gov.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Jerry Collins, 1445 Ross Ave., Suite 1200 (6PD-P), Dallas, TX 75202-2733. Telephone: (214) 665-7562, e-mail: collins.jerry@epa.gov.

Region VII (Iowa, Kansas, Missouri, Nebraska)

Brad Horchem, 901 N 5th St., (WWPDPEST), Kansas City, KS 66101. Telephone: (913) 551–7137, e-mail: horchem.brad@epa.gov.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Peg Perreault, 999 18th St., Suite 300, (8P-P3T), Denver, CO 80202–2466. Telephone: (303) 312–6286, e-mail: perreault.peg@epa.gov.

Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam)

Paul Feder, 75 Hawthorne St (CMD-1), San Francisco, CA 94105, Telephone: (415) 947–4160, e-mail: feder.paul@epa.gov.

Region X (Alaska, Idaho, Oregon, Washington)

Karl Arne, 1200 6th Ave (ECO-084), Seattle, WA 98101. Telephone: (206) 553–2576, e-mail: arne.karl@epa.gov.

List of Subjects

Environmental protection, Pesticides.

Dated: March 28, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–8156 Filed 4–3–02 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51985; FRL–6830–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2002 to February 28, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical

names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51985 and the specific PMN number, must be received on or before May 6, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51985 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' 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 OPPTS–51985. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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 OPPTS–51985 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51985 and the specific PMN number. 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 listed 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. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2002 to February 28, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/02 TO 02/28/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0354	02/14/02	05/15/02	CBI	(G) Surfactant	(G) Acrylic polymer
P–02–0355	02/14/02	05/15/02	CBI	(G) Saturation resin for structural composites	(G) Polymer with phenol-bisphenol-formaldehyde
P–02–0356	02/14/02	05/15/02	CBI	(G) Additive for paint	(G) Aliphatic benzoate ester
P–02–0358	02/14/02	05/15/02	CBI	(G) Chain-terminating agent	(G) Alkyl xanthate
P–02–0359	02/15/02	05/16/02	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) Substituted pyridine coupled with diazotized substituted nitrobenzonitrile, diazotized substituted benzenamine and substituted pyridinecarbonitrile
P–02–0360	02/15/02	05/16/02	AOC L.L.C.	(S) Polyester component for sheet molding compound for plastic parts; polyester component for bulk molding compound for plastic parts	(S) Hexanedioic acid (9ci) polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediol and 2,5-furandione
P–02–0361	02/15/02	05/16/02	The Prince Manufacturing Company	(S) Onecoat resin for tpo's; adhesives for tpo's	(S) 2-propenoic acid, 2-methyl-, polymers with chlorinated maleic anhydride-polypropylene reaction products, cyclohexyl methacrylate and me methacrylate
P–02–0362	02/15/02	05/16/02	CBI	(G) Product is a component in a lubricant blend with final use in the plastics industry	(G) Mixed alkyl phosphate esters alkoxylated
P–02–0363	02/19/02	05/20/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0364	02/19/02	05/20/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0365	02/19/02	05/20/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0366	02/19/02	05/20/02	CBI	(G) Polymeric chromophore	(G) Polyalkoxylated aromatic chromophore
P–02–0367	02/19/02	05/20/02	CBI	(G) Chemical intermediate	(G) Polyalkoxylated phenol derivative
P–02–0368	02/19/02	05/20/02	CBI	(G) Chemical intermediate	(G) Polyalkoxylated phenol derivative
P–02–0369	02/19/02	05/20/02	Solutia Inc.	(S) Curing resin for industrial coatings	(G) Modified epoxy resin
P–02–0370	02/19/02	05/20/02	AOC, LLC	(S) Polyester component for filament winding of fiberglass reinforced plastic parts	(S) 1,3-benzenedicarboxylic acid (9ci) polymer with 1,4-benzenedicarboxylic acid, 2,5-furandione, 2,2'-oxybis(ethanol) and 1,2-propanediol
P–02–0371	02/20/02	05/21/02	BASF Corporation	(G) Pick-up truck bed liner	(G) Ipdi prepolymer
P–02–0372	02/20/02	05/21/02	CBI	(S) Reactive dyestuff for the coloration of cellulosic fiber materials	(G) Bifunctional reactive azo dye
P–02–0373	02/20/02	05/21/02	CBI	(G) Open, non dispersive (dye)	(G) Anthracene dyestuff
P–02–0374	02/20/02	05/21/02	CBI	(G) Adhesion promotor	(G) Chlorinated polyester
P–02–0375	02/20/02	05/21/02	CBI	(S) Reactive dyestuff for the coloration of cellulosic fiber materials	(G) Bifunctional reactive azo dye
P–02–0376	02/20/02	05/21/02	CBI	(G) Lubricant additive	(G) Fatty acid ester
P–02–0377	02/20/02	05/21/02	H.B. Fuller Company	(S) Pleat bonding adhesive for air and oil filters; adhesive and coating for textiles	(G) Polyamide
P–02–0378	02/20/02	05/21/02	H.B. Fuller Company	(S) Pleat bonding adhesives for air and oil filters; adhesive and coating for textile	(G) Polyamide

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/02 TO 02/28/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0379	02/20/02	05/21/02	H.B. Fuller Company	(S) Pleat bonding adhesive for air and oil filters; adhesives and coating for textiles	(G) Polyamide
P–02–0380	02/20/02	05/21/02	H.B. Fuller Company	(S) Pleat bonding adhesive for air oil filters; adhesive and coating for textiles	(G) Polyamide
P–02–0381	02/21/02	05/22/02	Solutia Inc.	(S) Curing resin for industrial can coatings	(G) Polyester resin
P–02–0382	02/21/02	05/22/02	CBI	(G) Petroleum lubricant additive	(G) Alkylbenzene sulfonate
P–02–0383	02/21/02	05/22/02	E.I. Du pont de Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,4-cyclododecanediol*
P–02–0384	02/21/02	05/22/02	E.I. Du pont de Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,5-cyclododecanediol
P–02–0385	02/21/02	05/22/02	E.I. Du pont de Nemours and Company - Dupont Nylon	(S) Polyurethane monomer; polyester monomer; fragrance intermediate	(S) 1,6-cyclododecanediol
P–02–0386	02/22/02	05/23/02	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–02–0387	02/22/02	05/23/02	Solutia Inc.	(S) Defoamer for waterborne emulsion paints and adhesives	(G) Modified alkyd resin
P–02–0388	02/25/02	05/26/02	CBI	(S) Intermediate used in the manufacture of photoresist raw materials	(G) Arylsulfonium compound
P–02–0389	02/25/02	05/26/02	CBI	(G) An open non-dispersive use	(G) Alkyd resin
P–02–0390	02/25/02	05/26/02	CBI	(G) Softening of cellulose	(G) Fatty acid, alkanolamine ester
P–02–0391	02/25/02	05/26/02	Specialty Fertilizer Products LLC	(G) Fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid salt copolymer
P–02–0392	02/25/02	05/26/02	Loctite Corporation	(S) A component of adhesive formulations for general industrial bonding applications	(S) Poly[oxy(methyl-1,2-ethanediyl)],alpha-[[[3-(trimethoxysilyl)propyl]amino]carbonyl]-omega-[[[[3-(trimethoxysilyl)propyl]amino]carbonyl]oxy]-
P–02–0393	02/25/02	05/26/02	Specialty Fertilizer Products LLC	(G) Intermediate for chemical used as fertilizer dust control coating and agronomic enhancement product	(G) Maleic acid salt copolymer
P–02–0394	02/25/02	05/26/02	CBI	(S) Raw material used in a photoresist formulation	(G) Arylsulfonium compound
P–02–0395	02/26/02	05/27/02	CBI	(G) Chemical intermediate	(G) Cyclohexene-carboxylic acid, [(dipropenylamino)carbonyl]-,sodium salt, (1r,6r)-rel-
P–02–0396	02/25/02	05/26/02	CBI	(S) Raw material for use in fragrances for soaps and household personal care products	(G) Aliphatic substituted amide
P–02–0397	02/25/02	05/26/02	CBI	(S) Siloxane polymer used as an intermediate for another polymer	(G) Siloxane polymer
P–02–0398	02/25/02	05/26/02	CBI	(S) Siloxane polymer used as a raw material in photoresist	(G) Blocked siloxane polymer
P–02–0399	02/25/02	05/26/02	CBI	(G) Uv/eb curing agent (all categories)	(S) Butanedioic acid, (tetrapropenyl)-, mono[2-[(1-oxo-2-propenyl)oxy]ethyl]ester
P–02–0400	02/25/02	05/26/02	CBI	(G) Uv/eb curing agent (all categories)	(S) Butanedioic acid, (tetrapropenyl)-, mono[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl ester
P–02–0401	02/25/02	05/26/02	CBI	(G) Uv/eb curing agent (all categories)	(S) Butanedioic acid, octenyl-, mono[2-[(1-oxo-2-propenyl)oxy]ethyl] ester
P–02–0402	02/25/02	05/26/02	CBI	(G) Uv/eb curing agent (all categories)	(S) Butanedioic acid octenyl-, mono[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl] ester
P–02–0403	02/28/02	05/29/02	Hercules incorporated	(G) Papermaking chemical	(G) Imidazolium salt
P–02–0404	02/28/02	05/29/02	CBI	(S) Coating for paperboard stock	(G) Aliphatic polyester polyurethane with tertiary amine
P–02–0405	02/28/02	05/29/02	CBI	(G) An open, non-dispersive use	(G) Polyester-type polyurethane
P–02–0406	02/28/02	05/29/02	CBI	(G) Corrosion inhibitor	(G) Acetaldehyde based polymer
P–02–0407	02/28/02	05/29/02	3m company	(S) Cross linker	(G) Urethane acrylate
P–02–0408	02/28/02	05/29/02	Ciba specialty chemicals Corporation, textile effects	(S) Exhaust dyeing of polyester fibers	(G) Acetamide, substituted alkylamino phenyl azo substituted isoindole

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/02 TO 02/28/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0409	02/28/02	05/29/02	Ciba specialty chemicals Corporation, textile effects	(S) Exhaust dyeing of polyester fibers	(G) Acetamide, substituted methoxyalkylamino phenyl azo substituted isoindole

In table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 37 NOTICES OF COMMENCEMENT FROM: 02/14/02 TO 02/28/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0187	02/28/02	02/21/02	(G) Ethoxyylated phenol, styrenated
P–00–0560	02/27/02	01/14/02	(G) Acrylic emulsion polymer
P–00–0561	02/27/02	01/14/02	(G) Acrylic emulsion polymer
P–00–0562	02/27/02	01/14/02	(G) Acrylic emulsion polymer
P–00–0563	02/27/02	01/14/02	(G) Acrylic emulsion polymer
P–00–1144	02/27/02	01/16/02	(G) Unsaturated alkyl acid
P–01–0254	02/22/02	12/12/01	(G) Epoxy urethane acrylate
P–01–0340	02/14/02	01/07/02	(S) 9-octadecenoic acid, 12-(benzoyloxy)-, hexadecyl ester, [r-(z)]-
P–01–0479	02/26/02	02/07/02	(G) Dodecyl 4-methoxybenzene derivative
P–01–0502	02/22/02	02/11/02	(G) Polyesterimide resin, based on theic
P–01–0633	02/27/02	01/27/02	(G) Aliphatic thermoplastic polyurethane
P–01–0649	02/28/02	02/17/02	(G) Organometallic complex
P–01–0735	02/20/02	01/17/02	(G) Polyamideimide polymer
P–01–0758	02/28/02	02/11/02	(G) Organo silane ester
P–01–0804	02/14/02	01/12/02	(G) Substituted carbocyle
P–01–0834	02/15/02	01/30/02	(G) Aliphatic ester of dicarboxylic acid
P–01–0837	02/15/02	02/01/02	(G) Aliphatic ester of dicarboxylic acid
P–01–0892	02/27/02	01/08/02	(G) Polymer of substituted aromatic olefins and aliphatic olefins
P–01–0914	02/20/02	01/14/02	(G) Acrylic polymer
P–01–0915	02/20/02	01/14/02	(G) Acrylic polymer
P–01–0916	02/20/02	01/14/02	(G) Acrylic polymer
P–01–0917	02/22/02	02/14/02	(G) Methacrylic polymer
P–01–0927	02/20/02	01/14/02	(G) Polycarbonate and polyester-type polyurethane
P–02–0001	02/19/02	02/05/02	(G) Acrylic polymer on the basis of methyl methacrylate and n-butyl methacrylate
P–02–0016	02/26/02	02/07/02	(G) Fluorochemical urethane
P–02–0026	02/28/02	01/17/02	(G) Mixed aliphatic substituted bis-p-phenylene diurea
P–02–0032	02/21/02	01/29/02	(G) Aromatic thiophene derivative
P–02–0044	02/27/02	02/05/02	(G) Copper phthalocyanine derivative
P–02–0055	02/15/02	02/12/02	(G) Dioic acid, polymer with (substituted)diol, hydrazine, hydroxypoly[(substituted)diyl], (substituted)propanoic acid and [(substituted)cyclohexane], compd. with (substituted)amine
P–02–0096	02/22/02	02/19/02	(G) Acid functional acrylic polymer
P–94–1653	02/28/02	02/01/02	(G) Aromatic polyisocyanate
P–94–2134	02/27/02	01/18/02	(G) Polyalphaolefins
P–96–1704	02/14/02	12/20/01	(S) 8-decene-3, 5-dione,4,6,9-trimethyl-
P–98–0781	02/28/02	01/28/02	(G) Fluorinated amine oxide
P–98–1067	02/26/02	02/17/02	(G) Acrylated urethane
P–99–0407	02/26/02	01/19/02	(G) Polyester acrylate
P–99–0676	02/21/02	01/20/02	(G) Ethylene interpolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 20, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8157 Filed 4–3–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Tuesday, April 9, 2002, Meeting Closed to the Public. This Meeting Has Been Rescheduled for Wednesday, April 10, 2002.

DATE & TIME: *Wednesday, April 10, 2002 at 10 A.M.*

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed To The Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437 g.

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 personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: *Thursday, April 11, 2002 at 10 A.M.*

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Report of the Audit Division on McCain 2000, Inc. and McCain 2000 Compliance Committee, Inc.

Draft Advisory Opinion 2002–03: Green Party of Ohio by Paul Dumouchelle, Convener.

Rulemaking Plan to Implement the Bipartisan Campaign Reform Act of 2002; Revised Regulations Priorities.

Statement of Policy Regarding Party Committee Coordinated Expenditures.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–8350 Filed 4–2–02; 3:31 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–4]

Notice of Public Hearing on Federal Home Loan Bank Capital Plans

AGENCY: Federal Housing Finance Board.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) will hold the following public hearing:

Time and Date of Hearing: 2 p.m., Thursday, April 11, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Agenda: Finance Board staff currently is reviewing the proposed capital plans submitted by the Federal Home Loan Banks (Banks) to the Finance Board for approval, pursuant to the requirements of the Gramm-Leach-Blilely Act and the Finance Board's capital regulation. The purpose of this hearing is to provide an opportunity for the Banks that choose to participate in the hearing to clarify how proposed capital plans are consistent with the cooperative structure of the Bank System and provide liquidity for Bank members in a safe and sound manner. Public testimony at the hearing will be limited to presentations by Bank presidents or Bank board of directors chairpersons. Testimony prepared by a Bank for public delivery at the hearing should be submitted in writing to the Finance Board by 2 p.m., Tuesday, April 9, 2002.

Other individuals or organizations interested in commenting on the Banks' proposed capital plans may do so by submitting their comments in writing to the Finance Board prior to April 11, 2002.

Status: This hearing will be open to the public.

ADDRESSES: Send testimony and comments to Elaine L. Baker, Secretary to the Board, by electronic mail to *bakere@fhfb.gov*, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board, 202–408–2837 or Thomas D. Casey, Counsel to the Chairman, 202–408–2957.

Dated: April 2, 2002.

James L. Bothwell,

Managing Director.

[FR Doc. 02–8276 Filed 4–3–02; 8:45 am]

BILLING CODE 6725–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 April 18, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Daniel Enrique Dosoretz, Victor J. Dosoretz and Howard Michael Sheridan, all of Fort Myers, Florida; to acquire additional voting shares of Edison Bancshares, Inc., Fort Myers, Florida, and thereby indirectly acquire additional voting shares of Edison National Bank, Fort Myers, Florida.

Board of Governors of the Federal Reserve System, March 29, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8096 Filed 4–3–02; 8:45 am]

BILLING CODE 6210–01–S

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 April 29, 2002.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. First Financial of Renton, Inc., Renton, Washington, and First Financial Holdings, MHC, Renton, Washington; to

become bank holding companies by acquiring 100 percent of the voting shares of First Savings Bank of Renton, Renton, Washington.

Board of Governors of the Federal Reserve System, March 29, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8097 Filed 4–3–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10 a.m. (EDT), April 15, 2002.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 18, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 2, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–8258 Filed 4–2–02; 12:57 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on May 24, 2002, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, Section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the NIH. The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: May 24, 2002.

Time: 9 a.m. to 4:30 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10 (6th floor), Bethesda, Maryland 20892.

Contact Person: Steve Foote, Ph.D., Director, Division of Neuroscience & Basic Behavioral Science, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7204, MSC 9645, Bethesda, Maryland 20892. Email: *sf110w@nih.gov.* Phone: 301-443–3563.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting is also available on-line on the NIMH homepage at *http://www.nimh.nih.gov/events/interagencyautism.cfm.*

Yvonne T. Maddox,

Acting Deputy Director, National Institutes of Health.

[FR Doc. 02–8103 Filed 4–3–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Longitudinal Study of Environmental Effects on Child Health and Development, April 7, 2002, 11 AM to April 8, 2002, 5:30 PM, Sheraton Premiere Hotel, 8661 Leesburg Pike, Vienna, VA which was published in the **Federal Register** on March 18, 2002, 67 FR 52.

The meeting will be held April 7, 2002, 3:00 p.m. to April 9, 2002, 5:30 p.m., Sheraton Premiere Hotel, 8661 Leesburg Pike, Vienna, VA. The meeting is open to the public.

Dated: March 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8100 Filed 4–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: April 8, 2002.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael A. Sesma, PhD, Office of Scientific Review, National Institute

of General Medical Sciences, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048, sesmam@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 28, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8101 Filed 4–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 8–9, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Madison Monona Terrace, 9 East Wilson Street, Madison, WI 53703.

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 28, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8102 Filed 4–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: May 20, 2002.

Time: 9 AM to 3 PM.

Agenda: Discussion Panal on Scientific Boundaries for Review (PSBR).

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PHD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1114.

Information is also available on the Institute's/Center's home page: *www.csr.nih.gov/drgac/drgac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93,878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: March 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8099 Filed 4–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*). The U.S. Fish and Wildlife Service solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

[Permit No. TE–053379]

Applicant: Christine Mukai, Irvin, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic studies in Riverside, San Diego, San Bernardino, Orange, Los Angeles, Santa Barbara, and Ventura Counties, California for the purpose of enhancing its survival.

[Permit No. TE–053605]

Applicant: University of Colorado, Ft. Collins, Colorado

The applicant requests a permit to take (reduce to possession) the *Asplenium fragile* var. *insulare* (fragile fern), the *Haplostachys haplostachya* (honohono, Hawaiian mint), the *Hedyotis coriacea* (kio'ele, leather leaf sweet ear), the *Isodendrion laurifolium* (Aupaka), the *Neraudia ovata* (ma'aloa ma'aloa, spotted nettle brush), the *Portulaca sclerocarpa* (ihi, hard fruit purslane), the *Silene hawaiiensis* (Hawaiian catchfly), the *Silene lanceolata* (lanceleaf catchfly), the *Solanum incompletum* (popolu ku mai), the *Spermolepis hawaiiensis* (Hawaiian parsley), the *Stenogyne angustifolia* (creeping mint), the *Tetramolopium arenarium* (Mauna Kea pamakani), and the *Zanthoxylum hawaiiense* (hea'e a'e, Hawaiian yellow wood) in conjunction with species documentation surveys on the Big Island of Hawaii for the purpose of enhancing their survival.

[Permit No. TE–053598]

Applicant: Nicole Shorey, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic studies in San Diego County, California for the purpose of enhancing its survival.

[Permit No. TE–789266]

Applicant: Patricia Campbell, Temecula, California

The permittee requests a permit amendment to take (harass by survey)

the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Diego, Los Angeles, Imperial, Orange, Riverside, Inyo, Kern, San Bernardino, San Luis Obispo, Ventura, and Santa Barbara Counties, California in conjunction with surveys for the purpose of enhancing its survival.

[Permit No. TE–053924]

Applicant: Todd Sloat, McArthur, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Diego, Los Angeles, Imperial, Orange, Riverside, Kern, San Bernardino, San Luis Obispo, Ventura, and Santa Barbara Counties, California and Yuma, La Paz, and Mohave Counties, Arizona in conjunction with surveys for the purpose of enhancing its survival.

[Permit No. TE–053928]

Applicant: San Diego State University Foundation, San Diego, California

The applicant requests a permit to take (reduce to possession) the *Nitrophila mohavensis* (Amargosa niterwort) and the *Centaurium namophilum namophilum* (spring-loving centaury) in Inyo County, California in conjunction with species research for the purpose of enhancing their survival.

[Permit No. TE–053777]

Applicant: David Bise, Pasadena, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in San Diego, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, California in conjunction with surveys for the purpose of enhancing their survival.

[Permit No. TE–040531]

Applicant: Kelly Volansky, Riverside, California

The permittee requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout its range in Arizona, and the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Pima, Pinal, and Maricopa Counties, Arizona in conjunction with surveys for the purpose of enhancing their survival.

[Permit No. TE–054120]

Applicant: Russell Huddleston, Sacramento, California

The applicant request a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool tadpole shrimp (*Lepidurus packardi*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) throughout the range of each species in conjunction with surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received within 30 days of the date of publication of this notice.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: March 20, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–8109 Filed 4–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Adoption and Notice of Availability of a Final Environmental Impact Statement (EIS) on the Anacapa Island Restoration Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service is adopting the National Park Service (NPS) Final Environmental Impact Statement (FEIS) on the Anacapa Island Restoration Project in support of a special purpose migratory bird permit application submitted by NPS. Copies of the adopted FEIS are available from the National Park Service (*http://www.nps.gov/chris/naturalresources/AIRP.html*) or U.S. Fish and Wildlife Service (address below). Preparation of the Record of Decision will begin no sooner than 30 days from this notice.

ADDRESSES: Questions should be addressed to Brad Bortner, Chief, Division of Migratory Birds and Habitat Programs, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181 (503–231–6164).

SUPPLEMENTARY INFORMATION:

Document Availability

Copies of the final Environmental Impact Statement are available at the following government offices and library:

The FEIS is available at Park Headquarters, Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, California 93001 (or via telephone at (805) 658–5700); on the Park's Web site (*http:www.nps.gov/chris/naturalresources/AIRP.html*); and at Fosters Library, Ventura, California.

A. Background

Pursuant to the National Environmental Policy Act (NEPA), the National Park Service prepared a Final Environmental Impact Statement (FEIS) assessing the benefits to migratory birds and other natural resource values and the potential impacts of eradicating the Black rat on Anacapa Island. This notice of availability of the FEIS was originally published in a **Federal Register** Notice dated October 12, 2000. Subsequently, the National Park Service applied for a special purpose migratory bird permit (50 CFR 21.27) to take birds during eradication of the rats.

The U.S. Fish and Wildlife Service (Service) in accordance with 40 CFR 1506.3 and the Amended Memorandum Opinion (*The Fund for Animals* v. *Fran Mainella, USDCDC, Civil Action No. 01–2288 [ESH],* dated November 29, 2001) is adopting and recirculating the FEIS.

The FEIS presents alternatives and analyzes the anticipated effects of implementing proposed actions to accomplish the following objectives: (1) Eradicating introduced Black rats on Anacapa Island; (2) adopting an emergency response plan for accidental introductions of rodents on Anacapa, Santa Barbara, Prince, and Sutil Islands; and (3) incorporating a prevention strategy to reduce the potential for rodents to be accidentally introduced to

these islands of Channel Islands National Park. The proposed action was developed in concert with the Island Conservation and Ecology Group and is based on worldwide evaluation of other island rat eradication projects. Actions to eradicate existing and prevent potential Black rat infestations are necessary because of the ecological damage occurring on Anacapa Island, the benefit this action would have for migratory birds, and the potential negative impact they would have if introduced to other islands in Channel Islands National Park.

Dated: March 7, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–8126 Filed 4–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–6310–DP; HAG02–0126]

Notice of Availability of the Draft Kelsey Whisky Landscape Management Plan, Associated Amendments to the Medford Resource Management Plan, and Draft Environmental Impact Statement

AGENCY: Glendale Resource Area, Medford District, Bureau of Land Management.

ACTION: Notice of availability of the Draft Kelsey Whisky Landscape Management Plan (LMP), Associated Amendments to the Medford Resource Management Plan (RMPA), and Draft Environmental Impact Statement (EIS) (RMPA/LMP/EIS).

SUMMARY: The Glendale Resource Area is providing the Draft Kelsey Whisky Landscape Management Plan (LMP), Associated Amendments to the Medford Resource Management Plan (RMPA), and Draft Environmental Impact Statement (EIS) (RMPA/LMP/EIS) for public review and comment. The planning area encompasses approximately 104,000 acres of public land managed by the Glendale Resource Area, Medford District and located in Josephine, Douglas and Curry counties in southwestern Oregon. The Bureau of Land Management (BLM) has and will continue to work closely with all interested parties to identify the management decisions that are best suited to the needs of the public. The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and they must be able to be resolved in this planning process. Specific comments are the most useful in helping us improve the analysis and development of the preferred alternative. Documents referenced in this draft EIS may be examined at the Medford District Office during normal working hours.

DATES: The comment period will end 90 days after the publication of the Environmental Protection Agency's Notice of Availability of the draft RMPA/LMP/EIS in the **Federal Register**. Comments must be received on or before the end of the comment period at the address listed below. No public meetings, open houses or field tours of the project area have been scheduled at this time. If there is sufficient public interest, public meetings will be arranged to discuss the management alternatives and answer questions. At least 15 days notice in local media will be given for activities where the public is invited to attend. All meetings will be published on the Medford District web site *www.or.blm.gov/Medford* under ''Planning Documents'' (subject to internet availability) and in the Grant's Pass Courier and Umpqua Free Press newspapers. Comments, including names and addresses of commentors, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Written comments should be sent to Sherwood Tubman, Ecosystem Planner, Glendale Resource Area, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504. Planning records are available at this address for inspection during normal working hours. Requests for copies of the draft plan can also be made by telephone to Sherwood Tubman at 541–618–2399 or Lynda Boody at 541–618–2279.

SUPPLEMENTARY INFORMATION: There are three action alternatives and a no-action alternative, each developed with differing emphasis. The range of management direction includes timber harvest of anywhere from 4.8 to 12.9 million board feet (MMBF), restoration activities, road decommissionings, water source enhancement projects, fuel hazard reduction treatments, and other land management direction. Public comments were considered in developing and analyzing issues and alternatives, along with local government, known interest groups and data developed by BLM staff. The alternatives were designed to address, in different ways, the land and resource management issues identified in the early stages of the planning process.

Authority: Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA).

Dated: March 14, 2002.

Lynda Boody,

Field Manager, Glendale Resource Area.

[FR Doc. 02–8228 Filed 4–3–02; 8:45 am]

BILLING CODE 4310–33–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–449]

Certain Abrasive Products Made Using a Process for Powder Preforms, and Products Containing Same; Notice of Commission Decision to Affirm ALJ Order No. 40 and Not to Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 8, 2002, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation, and determined to affirm ALJ Order No. 40 issued by the ALJ on October 12, 2001.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* Hearing-impaired persons are advised that information on the matter can be obtained by contacting

the Commission's TDD terminal on 202–205–1810.

Copies of the public version of ALJ Order No. 40, the Commission's opinion affirming that Order, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 5, 2001, based upon a complaint filed on January 5, 2001, by Minnesota Mining & Manufacturing Co. (''3M'') of St. Paul, Minnesota and Ultimate Abrasive Systems, LLC (''UAS'') of Atlanta, Georgia. 66 FR 9720 (Feb. 9, 2001). Their complaint named Kinik Company (''Kinik'') of Taipei, Taiwan and Kinik Corporation (''Kinik Corp.'') of Anaheim, California as respondents.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain abrasive products that are made using a process for making powder preforms that is covered by claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 (''the '489 patent''), owned by UAS and exclusively licensed to 3M. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

Complainants moved to terminate the investigation with respect to Kinik Corp. after they concluded that Kinik Corp was not manufacturing or importing products that infringed the '489 patent. The ALJ granted this motion on June 19, 2001, in an ID (Order No. 15) and the Commission determined not to review that ID. On August 8, 2001, the ALJ issued an ID (Order No. 19) that the economic prong of the domestic industry requirement was satisfied with respect to the claims at issue of the 489 patent, and the Commission determined not to review that ID.

An evidentiary hearing was held on October 10–17, 27, and 30, 2001. On February 8, 2002, the ALJ issued his final ID, in which he determined that Kinik's accused DiaGrid abrasive products infringed claims 1, 4, 5, and 8 of the '489 patent and that the '489 patent was valid and enforceable. Based upon these findings, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of all Kinik abrasive products that infringe the '489 patent, which includes products produced using Kinik's DiaGrid process. He also recommended issuance of a cease and desist order, and a bond during the Presidential review period in the amount of 5 percent of the entered value of the infringing Kinik products.

On February 21, 2002, Kinik petitioned for review of the ALJ's final ID. Kinik also appealed Order No. 40, issued by the ALJ on October 12, 2001. That Order precluded Kinik from asserting 35 U.S.C. 271(g) as a non-infringement defense. On February 28, 2002, 3M and the Commission investigative attorney (IA) filed oppositions to Kinik's petition for review and its appeal of Order No. 40.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to affirm Order No. 40 and not to review the ID in its entirety. The Commission will issue an opinion explaining its reasons for affirming Order No. 40.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in Kinik being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Publication 2843 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the February 8, 2002 recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on April 11, 2002. Reply submissions must be filed no later than the close of business on April 18, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and §§ 210.42, 210.43, 210.45, 210.46, and 210.50 of the Commission's rules of practice and procedure, 19 CFR 210.42, 210.43, 210.45, 210.46, and 210.50.

Issued: March 29, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–8106 Filed 4–3–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–929 to 931 (Final)]

Silicomanganese From India, Kazakhstan and Venezuela; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of Transnational Co. Kazchrome and Aksu Ferroalloy Plant and Considar, Inc. (collectively ''K&C''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for April 2, 2002, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Laurent de Winter, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–708–5452, e-mail *lwinter@usitc.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that K&C have justified the need for a closed session. They seek a closed session to allow testimony concerning petitioner's financial performance, capacity utilization, and market share. Because there is only one domestic producer of silicomanganese, such discussions will necessitate disclosure of business proprietary information (BPI), and they can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a confidential presentation by K&C and a rebuttal presentation by petitioner. Questions from the Commission relating to the BPI will follow each of the in camera presentations. During the in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigations. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: On behalf of the General Counsel, the Deputy General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR § 201.39) that, in his opinion, a portion of the Commission's hearing in Silicomanganese from India, Kazakhstan and Venezuela, Invs. Nos. 731–TA–929 to 931 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: April 1, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–8136 Filed 4–3–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2002 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of funds under the Tribal Resources Grant Program, a program designed to meet the most serious needs of law enforcement in Indian communities through a comprehensive grant program that will offer a variety of funding options including: New, additional police officer positions; basic and/or specialized training for new and existing officers; training in community policing, grants management and computer training; uniforms and basic issue equipment; department-wide technology; and police vehicles. This program, which complements the COPS Office's efforts to fund additional community policing officers and to support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in tribal communities which have limited resources and are affected by high rates of crime and violence. Applications should reflect the department's most serious law enforcement needs and must link these needs to the implementation or enhancement of community policing. In addition, a Retention Plan Certification form outlining how COPS-funded officer positions will be retained after Federal funding has ended must be submitted with the grant application.

All Federally Recognized Tribes with established police departments or existing police efforts are eligible to apply. Federally Recognized Tribes that wish to establish police departments and meet specific criteria are also eligible to apply. Federally Recognized Tribes may also apply as a consortium with a written partnership agreement that names a lead agency and describes how requested resources will serve the consortium's population. In addition, tribes that are currently served by Bureau of Indian Affairs (BIA) law enforcement may request funding under this grant program to supplement their existing police services. Tribes whose law enforcement services are exclusively provided by local policing agencies through a contract agreement are not eligible under the COPS TRGP program, but may be eligible to apply to the COPS Universal Hiring Program for police officer positions only.

DATES: Applications will be sent to all Federally Recognized Tribes with existing law enforcement efforts by April 2002. Tribes or villages that wish to apply as a start-up or consortium may request an application kit from the COP Office. The deadline for the submission of applications is May 17, 2002. Applications must be postmarked by May 17, 2002 to be considered eligible.

ADDRESSES: To obtain an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. A copy of the application kit will also be available in April on the COPS Office web site at: *http://www.cops.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Grant Program Specialist.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1995 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes of this nation. The Tribal Resources Grant Program is a program developed to meet the most serious needs of law enforcement in tribal communities through a comprehensive grant program that will offer a variety of funding options. This program will enhance law enforcement infrastructures and community policing efforts in these tribal communities, many of which have limited resources and are affected by high rates of crime and violence.

The Tribal Resources Grant Program is part of a larger federal initiative which over the last four years, has resulted in the Departments of Interior and Justice working in collaboration to improve law enforcement in tribal communities. Funding has been appropriated to several DOJ agencies including the FBI, the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Corrections Program Office (CPO), and the COPS Office. COPS is coordinating with these agencies as well as with the Office of Law Enforcement Services of the Bureau of Indian Affairs to ensure that limited resources are not spent on duplicative efforts.

A total of $35,000,000 in funding will be available under the Tribal Resources Grant Program. The grant will cover a maximum federal share of 75% of total project costs up to specified Federal share funding cap depending on the funding category. A local match requirement of at least 25% of the total project costs is included in this program. A waiver of the local match requirement may be requested at the time of application. Waivers are reviewed on a case-by-case basis, based on a demonstration of severe fiscal distress. Tribes whose law enforcement service are exclusively provided by local policing agencies through contract arrangements are not eligible under this COPS program. However, tribes that do not meet the eligibility requirements for this program may be eligible to apply to the COPS Office Universal Hiring Program for police officer positions only.

Receiving an awarded under the Tribal Resources Grant Program will not preclude grantees from future consideration under other COPS grant programs for which they are eligible.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: March 27, 2002.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 02–8090 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2002 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the entry-level salary and benefits for newly hired, additional sworn officers over a three year grant term, up to a maximum of $75,000 per officer. A minimum 25 percent local match, paid with state or local funds, is required. To qualify for funding, officers must be hired on or after the grant award start date. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. At the time of application, applicants must agree to plan for the retention of each COPS-funded UHP position awarded with state, local or other non-COPS funds at the conclusion of federal funding, for a minimum of one full local budget cycle. The retention requirement cannot be satisfied through attrition. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

DATES: The priority consideration deadline for UHP funding is May 24, 2002. The second and final deadline date for all UHP applications is June 21, 2002. All UHP applications must be postmarked by the final deadline date. Applications postmarked after the final deadline date will not be considered. All grant awards are subject to the availability of funds. In the event that UHP funding requests exceed available grant funds, applications may be considered in subsequent fiscal years. Since funding is limited under UHP, we encourage interested agencies to apply early.

ADDRESSES: To obtain a copy of an application or for additional information, call the U.S. Department of Justice Response Center at 1–800–421–6770. The UHP application kit and information on the COPS Office are also available on the Internet via the COPS Web site at: *www.cops.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes of this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made for up to 75 percent of the entry level salary and benefits for each new officer over three years, up to a maximum of $75,000 per officer, with a required minimum 25 percent local match to be paid with state or local funds. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. Officers must be hired on or after the grant award start date to qualify for grant funding.

Waivers of the non-federal matching requirement may be requested under UHP, but will be granted only upon a demonstration of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to officer hiring in the absence of the grant. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. At the time of application, applicants must agree to plan for the retention of each COPS-funded UHP position awarded with state, local or other non-COPS funds at the conclusion of federal funding, for a minimum of one full local budget cycle. The retention requirement cannot be satisfied through attrition.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: March 15, 2002.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 02–8115 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Civil Rights Division; Office of Special Counsel, for Immigration Related, Unfair Employment Practices; Immigration Related Employment Discrimination; Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration related employment discrimination. Grants will range in size from $40,000 to $100,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate workers, employers and the general public about the antidiscrimination provisions of the INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, labor organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies, providing information services to potential victims of discrimination and/or employers.

Application Due Date: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). OSC's e-mail address is: *osc.crt@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers, workers covered by this statute, and/or the general public.

Background

The Immigration and Nationality Act protects work-authorized individuals from employment discrimination based on their citizenship status and/or national origin. Federal law also makes knowingly hiring unauthorized workers unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

Employers of four or more employees are prohibited from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

U.S. citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include:

- Temporary Residents;
- Legal Permanent Residents;
- Refugees;
- Asylees.

Citizens and all work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the document abuse provision of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible immigration related job discrimination.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions of the INA. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (*e.g.*, brochures, posters, booklets, information packets and videos) to educate these groups, OSC has determined that the main focus of the program should be on the actual delivery of these materials to educate further both potential victims and employers. OSC seeks proposals that will use existing materials effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions. OSC will, of course, consider any proposal that articulates and substantiates other creative means of reaching these populations.

Program Description

The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Program budgets must include the travel, lodging and other expenses necessary for up to two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning

of the grant period (late autumn). Proposals should outline the following key elements of the program:

Part I: Intended Audience(s)

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or (3) employers, especially small businesses. The proposals should define the characteristics of the work authorized population or the employer group(s) intended to be the focus of the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the intended audience(s).

The proposals should also detail the reasons for focusing on each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign focuses and supporting the reasons for the selection, applicants may use census data, studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible intended audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Grants are an important component of OSC partnerships to better serve the public, employers and potential discrimination victims. Grantees should plan to include OSC attorneys and other professional staff in public outreach programs in order to more successfully reach their audiences and prevent discrimination before it occurs or combat it where it exists.

Some grantees who are conducting citizenship campaigns have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals. Applicants proposing to combine these efforts should discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, applicants should include in their budget proposals the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC prior to production to ensure legal accuracy and proper emphasis. Proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also identify OSC as a source of assistance, information and action, and include the correct address and telephone numbers of OSC, (including the toll-free numbers, TDD numbers) and OSC e-mail and Internet addresses.

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts. Therefore, it is critical that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due at least quarterly, or more frequently as needed throughout the grant year.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.

In determining which application to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the intended population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (10 points)

b. Selection and definition of the intended audience(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the intended audience(s). (15 points)

c. A cost-effective campaign strategy for educating employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to define the intended audience, reach it and implement the public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (10 points)

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project.

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations, including labor organizations, employer groups and state and local government agencies.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $40,000 to $100,000.

Publications of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 2002.

Application Deadline

All applications must be received by 6 PM EDT, May 20, 2002. If using regular first-class mail, send to: U.S.Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. If using messengers, overnight or priority mail, send to: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., NW., Suite 9000, Washington, DC 20005. Applications may not be submitted via facsimile machine.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424).

Note: The Catalogue of Federal Domestic Assistance number is 16.110 and the title is, Education & Enforcement of the Antidiscrimination Provisions of the Immigration and Nationality Act, (box #10 of the SF 424).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. Disclosure Form to Report Lobbying (SF LLL).

4. OJP Form 4000/3 (Assurances).

5. An abstract of the full proposal, not to exceed one page.

6. A program narrative of not more than fifteen (15) double-spaced typed pages that includes the following:

a. A clear statement describing the approach and strategy to be used to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion and the extent of OSC participation in grantee outreach events;

c. The proposed staffing plan. Note: If grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff, hiring is subject to review and approval by OSC at that time; and

d. Description of how the project will be evaluated.

7. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontractors, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for not more than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

8. Copies of resumes of the professional staff proposed in budget.

Application forms may be obtained by writing or telephoning: U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement and the required forms will also appear on the World Wide Web at *www.usdoj.gov/crt/osc/* In order to facilitate handling, please do not use covers, binders or tabs.

Dated: March 28, 2002.

Juan Carlos Benítez,

Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 02–8110 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Agere Systems, Inc., et al.*, Civil Action No. 02–CV–1681 was lodged with the United States District Court for the Eastern District of Pennsylvania on March 27, 2002.

The Consent Decree resolves the United States' claims against twelve defendants—Agere Systems, Inc.; American Color and Chemical, LLC; Carpenter Technology Corporation; Continental Holdings, Inc.; Exide Technologies, Inc.; The Glidden Company; Hofmann Industries, Inc.; Honeywell International Inc.; Quadrant EPP, Inc.; Sonoco Fibre Drum, Inc.; Sonoco Products Company; and Unisource Worldwide, Inc. (''Settling Defendants'')—under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for past response costs incurred by the United States at the Berks Landfill Superfund Site in Spring Township, Berks County, Pennsylvania. The Consent Decree requires the Settling Defendants to pay $1,100,000.00 to the United States.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044–7611 and refer to *United States* v. *Agere Systems, Inc.*, DOJ Ref. No 90–11–2–1347/1.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Copies of the proposed Consent Decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611,

Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, facsimile no. (202) 514–0097, phone confirmation no. (202) 514–1547. When requesting copies, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $9.00 and reference *United States* v. *Agere Systems, Inc.*, DOJ Ref. No. 90–11–2–1347/1.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division, Department of Justice.

[FR Doc. 02–8094 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Under the policy set out at 28 CFR 50.7, notice is hereby given that on March 25, 2002, the United States lodged a proposed Consent Decree for the Mine Flooding Operable Unit in Butte, Montana (the ''Mine Flooding Consent Decree'') in *United States* v. *Atlantic Richfield Company et al.,* Civil Action No. 02–35–BU–RFC, with the United States District Court for the District of Montana.

This lawsuit was brought by the United States against five entities—Atlantic Richfield Company; ASARCO; Montana Resources; Montana Resources, Incorporated; AR Corporation; and Dennis Washington (collectively, the ''Settling Defendants'')—under Sections 106, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606, 9607, 9613(g)(2), for: (a) The recovery of costs incurred by EPA in response to releases and threatened releases of hazardous substances at and from the Butte Mine Flooding Operable Unit, including a related removal action at the Travona Shaft/West Camp Operable Unit, which is part of the Butte Mine Flooding Operable Unit (collectively the ''Mine Flooding Site''), together with accrued interest; (b) a declaratory judgment regarding liability for Future Response Costs paid at the Mine Flooding Site; and (c) the performance of certain response actions consistent at the Mine Flooding Site consistent with CERCLA's implementing regulations, which are contained in the National Contingency Plan (NCP) at 40 CFR part 300.

Under the terms of the proposed Consent Decree lodged with the Court, the Settling Defendants will, among other things: (a) Implement the cleanup plan selected by the U.S. Environmental Protection Agency (EPA) for the Mine Flooding Site, (b) reimburse EPA for its past costs in responding to the releases of hazardous substances at the Mine Flooding Site, and (c) make a lump sum payment to EPA to cover its anticipated future costs in overseeing and monitoring the cleanup at the Mine Flooding Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Office of the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and refer to *United States* v. *ARCO,* DOJ Case Number 90–11–2–430.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Montana, 2929 Third Avenue North, Suite 400, Billings, Montana 59101, and at U.S. EPA Region VIII Montana Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, Montana 59624. A copy of the proposed Consent Decree may also be obtained by mailing a request to the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547.

In requesting a copy of the Consent Decree, please reference *United States* v. *ARCO,* DOJ Case Number 90–11–2–430, and enclose a check in the amount of $30.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–8093 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 18, 2002, a proposed Consent Decree in *United States* v. *Ferro Corporation*, Civil Action No. 2:02 CV 115, was lodged with the United States District Court for the Northern District of Indiana (Hammond Division).

In this action the United States sought civil penalties and injunctive relief from Ferro Corporation (''Ferro'') for its violations of the Clean Air Act (the ''Act''), the federally-approved provisions of the Indiana State Implementation Plan, and three administrative orders issued by the United States Environmental Protection Agency (''U.S. EPA''). The consent decree, which reflects a settlement of the claims of three environmental agencies, the Untied States Environmental Protection Agency, the Indiana Department of Environmental Management, and the City of Hammond's Department of Environmental Management, obligates Ferro to pay the three agencies collectively civil penalties totaling $3 million: $1,050,000 to the United States, $600,000 to the State of Indiana and $1,350,000 to the City of Hammond. Additionally, Ferro is obligated pursuant to the consent decree to: (1) Hire an independent consultant to conduct an Environmental Management System (''EMS'') audit at the facility; and (2) as a state and city environmental project, finance a brownfield clean-up project in the City of Hammond, which is valued at $844,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ferro Corporation* Civil Action No. 2:02 CV 115, D.J. Ref. 90–5–2–1–1910/1.

The consent decree may be examined at the United States Attorney's Office, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–761 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $7.00 payable to the U.S. Treasury to cover the costs of copying.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 02–8091 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 25, 2002 a proposed Partial Consent Decree in *United States* v. *Pharmacia Corporation (p/k/a Monsanto Company) and Solutia, Inc.,* Civil Action No. CV–02–PT–0749–E was lodged with the United States District Court for the Northern District of Alabama.

In this action the United States alleges that Pharmacia Corporation and Solutia, Inc. (''Defendants'') are liable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), for injunctive relief in connection with the release of hazardous substances from the Defendants' manufacturing facility located in Anniston, Alabama into the environment. The United States further alleges that the Defendants are liable for reimbursing the United States for all future response costs incurred in connection with the Anniston PCB Site.

This Partial Consent Decree (hereafter ''Decree'') requires the Defendants to provide, in accordance with federal regulations, standards and guidelines, for a thorough assessment of contamination in and around Anniston, Alabama and to determine the risks that such contamination may pose to public health and the environment. This process is called the Remedial Investigation. In addition, the proposed Decree requires the Defendants to identify methodologies for cleanup of the contamination so as to provide the necessary protection of public health and the environment. This process is called the Feasibility Study. Ultimately, from this process, the U.S. Environmental Protection Agency (''EPA'') will select the appropriate cleanup to ensure protection of public health and the environment. The costs for the Remedial Investigation and Feasibility Study (''RI/FS'') will be borne by the Defendants.

Under the proposed Decree, the Defendants will undertake implementation of the RI/FS. The RI/FS includes the Defendants' manufacturing facility and all areas where contamination has migrated from the facility.

In addition, the Decree requires the Defendants to provide over $3.2 million in funding to an education trust fund. The trust fund is created under the proposed Decree for the purpose of providing special education, tutoring, or other supplemental educational services for children of west Anniston that have learning disabilities or otherwise need additional educational services.

Under the Decree, the Defendants will be required to reimburse the United States for all future oversight costs.

Additionally, the Decree requires the Defendants to provide funding for a Technical Assistance Plan (''TAP''). The purpose of the TAP is to provide technical assistance to the community so that the community can play a meaningful role in the RI/FS process.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Pharmacia Corporation (p/k/a Monsanto Company and Solutia, Inc.,* D.J. Ref. 90–11–2–07135/1. The proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Northern District of Alabama, 1801 4th Avenue, North Birmingham, Alabama 35203; and at Region 4, Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. A copy of the proposed Partial Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $6.25 (without exhibits), $41.50 (with exhibits) (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Ellen M. Mahan,

Assistant Section Chief, Environment and Natural Resources Division.

[FR Doc. 02–8092 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, Inc.: ''Hot Metal Gas Forming '' (''HMGF'')

Notice is hereby given that, on March 8, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Auto Body Consortium, Inc.: ''Hot Metal Gas Forming'' (''HMGF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcoa, Alcoa Center, PA has acquired Reynolds Metals Company, Chester, VA and assumed its membership in the venture. Also, the following member has changed its name: Cooperweld, Piqua, OH to LTV Copperweld, Piqua, OH. In addition, Hydrodynamics Technologies, Inc., Auburn Hills, MI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.: ''Hot Metal Gas Forming'' (''HMGF'') intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.: ''Hot Metal Gas Forming'' (''HMGF'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department on July 31, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 3, 2000 (65 FR 59017).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–8095 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on March 5, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Cement Company

of California, Encino, CA; National Cement Company of Alabama, Birmingham, AL; Eastern Cement Corporation, West Palm Beach, FL; and Fuller Bulk Handling, Bethlehem, PA have resigned from PCA; and Giant Cement Holding, Inc., Summerville, SC has become a member. Also, Lehigh Portland Cement Company, Allentown, PA has changed its name to Lehigh Cement Company; Calaveras Cement Company, Concord, CA has changed its name to Lehigh Southwest Cement Company; Tilbury Cement Company, Seattle, WA has changed its name to Lehigh Northwest Cement Company; Tilbury Cement Limited, Delta, British Columbia, CANADA has changed its name to Lehigh Northwest Cement Limited; and Svedala Industries, Inc., York, PA (an Associate Member) has changed its name to Metso Minerals.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on January 30, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–8118 Filed 4–3–02; 8:45 am]

BILLING CODE 4310–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on March 4, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Water Heater Industry Joint Research and Development Consortium (''the Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing an extension of its term. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the term of the Consortium has been changed from a term of seven years beginning February 27, 1995 to a term of eight years beginning February 27, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on February 9, 2000 and February 26, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 29, 2001 (66 FR 17205).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–8117 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, Ltd.

Notice is hereby given that, on January 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum, Ltd. (''WAP''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Vizzavi, London, United Kingdom, has been added as a party to this venture. Novell, Inc., San Jose, CA, has acquired Cambridge Technology Partners, Inc., Cambridge, MA. Orange Communications, Lausanne, Switzerland, has acquired France Telecom, Paris, France. mm02, Slough, United Kingdom, has acquired VIAG Interkom GmbH & Co., Meunchen, Germany. Bell Mobility, Mississauga, Ontario, Canada, has changed its name to Exomi Oy. BT Cellnet, Slough, United Kingdom, has changed its name to mm02. Cable & Wireless Optus Ltd., North Sydney, New South Wales, Australia, has changed its name to Singtel Optus Ltd.

The following companies had their memberships canceled: ActiveSky Inc., San Mateo, CA; Agency.com, London, United Kingdom; Altawave Inc., Fremont, CA; Arch Wireless, Plano, TX; CellStar, Carrollton, TX; Centerpost Corporation, Chicago, IL; Cherrypicks, Hong Kong, Hong Kong-China; Cyber-COMM, Paris, France; FDTI, Lisboa, Portugal; Handsky Technology Limited, Nangjing, People's Republic of China; HelloAsia, Redwood City, CA; HiddenMind Technology, Cary, NC; Hii Co., Ltd., Taipei, Taiwan; Hotpalm.com, Atlanta, GA; Hyperwave, Graz, Austria; InDiQu, San Diego, CA; Informa Telecoms Group, London, United Kingdom; Isovia Inc., Boston, MA; LPG Innovations Ltd., Helsinki, Finland; MediaSolv.com, Inc., San Jose, CA; Microband, Inc., New York, NY; nCipher, Inc., Woburn, MA; NetSanity, Inc., Campbell, CA; ome internet communications services AG, Vienna, Austria; Pacific21 Ltd., London, United Kingdom; Palm, Inc., Santa Clara, CA; ResQNet.com, Inc., New York, NY; Societe Generale, Paris, France; SurfGold.com, Singapore, Singapore; Vicinity Corporation, Sunnyvale, CA; W–Phone, Inc., San Jose, CA; and White.Cell, Inc., Rosh-Haayin, Israel.

The following companies have resigned: Adobe Systems Inc., San Jose, CA; APAS Inc., Tokyo, Japan; Art Technology Group, Inc., Cambridge, MA; Askus AB, Stockholm, Sweden; Aspective Limited, Staines, United Kingdom; Barnes and Noble.com, New York, NY; Blue C Internet GmbH, Vienna, Austria; Civista Limited, Tolworth, United Kingdom; ClientSoft Inc., Hawthorne, NY; Columbitech AB, Stockholm, Sweden; Consafe Infotech AB, Malmo, Sweden; Dansk Data Elektronik A/S, Herlev, Denmark; Deutsche Bank AG, Eschborn, Germany; Digital Bridges Limited, Fife, Scotland, United Kingdom; Dimon Software, Reykjavik, Iceland; Edify Corporation, Santa Clara, CA; Ementor ASA, Oslo, Norway; eWare, Ltd., Dublin, Ireland; FedEx Corporation, Collierville, TN; HiQ International, Stockholm, Sweden; Infocomm Inc., Taipei, Taiwan; Intergraph Corporation, Inc., Huntsville, AL; Intershop Communications GmbH, Hamburg, Germany; KPMG Consulting, Inc., McLean, VA; Melody Interactive Solutions AB, Stockholm, Sweden;

Mgage Systems AB, Stockholm, Sweden; MobileRAIN Technologies, Inc., Union City, Ca; New Media Science/Linne Group, Oslo, Norway; Nortel Networks, Richardson, TX; PhoneDo Networks Inc., Herzliya, Israel; Pivotal Corporation, North Vancouver, British Columbia, Canada; Quinary, SpA, Milan, Italy; Radio Frequency Investigation Ltd., Hants, United Kingdom; Ubiquity S.r.l., Milan, Italy; and Virtual, Inc., Taipei, Taiwan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on November 20, 2001. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–8116 Filed 4–3–02; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–047)]

U.S. Centennial of Flight Commission

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a teleconference meeting of the U.S. Centennial of Flight Commission.

DATES: Wednesday, April 10, 2002, 3 p.m. to 4 p.m.

ADDRESSES: This meeting will be conducted via teleconference; hence participation will require contacting Ms. Beverly Farmarco at 202/358–1903 before 12 noon Eastern, April 8, 2002, leaving your name, affiliation, and phone number.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Farmarco, Code I–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the teleconferencing room. The agenda for the meeting is as follows: Review application for Media Patron Program.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 27, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–8089 Filed 4–3–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 20, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the

total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–02–3, 81 items, 81 temporary items). Electronic versions of temporary records relating to supply and transportation matters. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as property accountability, inventory management, warehouse space planning, motor vehicle operation and maintenance, cargo and passenger manifests, and the packaging, handling, and inspection of shipped property.

2. Department of the Air Force, Agency-wide (N1–AFU–02–4, 120 items, 120 temporary items). Electronic versions of temporary records relating to member services, public affairs activities, and information management. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as clubs and recreational activities, library administration, child care operations, cemeteries and burials, food services, laundry and dry cleaning operations, non-appropriated fund financial and personnel administration, Air Force news media, office administration, reprographics, records management, the Privacy Act program, and mail, publications, and forms management.

3. Department of the Army, Agency-wide (N1–AU–02–7, 2 items, 2 temporary items). Records relating to non-appropriated fund employee job descriptions. Included are master job descriptions, job standards, and similar information used in the analysis, development, and evaluation of specific jobs. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Defense, Defense Contract Audit Agency (N1–372–02–3, 3 items, 3 temporary items). Records pertaining to leased office equipment that are used to determine payments due vendors. Included are statistical reports provided to commercial concerns and electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, Defense Information Systems Agency (N1–371–02–3, 3 items, 3 temporary items). Communications security administrative files. Included are correspondence, messages, and other facilitative records relating to measures taken to protect telecommunications from unauthorized access. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Energy, Southeastern Power Administration (N1–388–00–01, 100 items, 68 temporary items). Comprehensive records schedule covering files of the Office of the Administrator, Legal Affairs, the Division of Finance and Marketing, the Division of Power Operations, and the Division of Human Resources and Administration. Records proposed for disposal include such file series as general correspondence, administrative files, recurring reports, power contracts, geological studies, daily operating logs, billing invoices, routine audits, and conference planning materials. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as the administrator's correspondence files, meeting minutes, legal policies, power marketing and management policies, legislative history case files, budget histories, engineering studies, speeches, press releases, significant photographs, audio-visual recordings, and publications.

7. Department of State, Bureau of Intelligence and Research (N1–59–01–15, 28 items, 15 temporary items). Records of the Office of Intelligence Resources relating to committees, boards, and working groups on which office staff serve as members only. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to such matters as foreign intelligence relationships, signals intelligence, intelligence collection activities, intelligence sharing, and the activities of committees, boards, and working groups for which the office serves as secretariat.

8. Department of State, Bureau of Political-Military Affairs (N1–59–01–24, 20 items, 17 temporary items). Files accumulated by the Assistant Secretary and Deputy Assistant Secretaries, including such records as electronic tracking systems for correspondence, schedules of daily activities, congressional inquiries, reference copies of National Security Directives, and copies of documents with special restrictions. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of chronological and program files of the Assistant Secretary, Deputy Assistant Secretaries, and other front office principals as well as a finding aid to the chronological files.

9. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1–436–01–1, 4 items, 4 temporary items). Alcohol label applications records including applications, approvals, denials, and related papers. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of the Treasury, International Financial Institutions Advisory Commission (N1–220–02–12, 5 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as correspondence, hearing records, and reports, including the Commission's report to Congress.

11. Department of the Treasury, International Monetary Fund Advisory Committee (N1–220–02–13, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing. Recordkeeping copies of correspondence files are proposed for permanent retention.

12. National Archives and Records Administration, Agency-wide (N1–64–02–1, 9 items, 6 temporary items). Administrative planning records for professional and scholarly conferences, symposia, ceremonies, and events. Included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as program proceedings and video and audio recordings of conferences and symposia.

13. National Archives and Records Administration, Agency-wide (N1–64–02–7, 2 items, 2 temporary items). User logs and system audit data for research room personal computers.

14. National Archives and Records Administration, Agency-wide (N1–64–02–8, 1 item, 1 temporary item). Routine requests for information, forms, and publications for which no research is required for reply.

15. National Credit Union Administration, Office of Strategic Planning (N1–413–02–3, 4 items, 3 temporary items). Files relating to the Government Performance and Results Act, including such records as correspondence, plans, distribution lists, planning schedules, semi-annual performance plans, audits/reviews, background papers, and other administrative records. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of strategic plans, annual performance plans, annual operating plans, and annual performance reports.

16. National Credit Union Administration, Office of General Counsel (N1–413–02–4, 10 items, 6 temporary items). Records relating to litigation and administrative hearings. Also included are electronic copies of documents accumulated by the Office of General Counsel created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of legal opinions, Freedom of Information Act reports, and rulemaking files.

17. National Credit Union Administration, Office of Corporate Credit Unions (N1–413–02–5, 5 items, 3 temporary items). Inputs and outputs for an electronic system relating to credit union supervision, examination, and insurance activities. The electronic data is proposed for permanent retention along with the related system documentation.

Dated: March 29, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3392, License No. SUB–526, EA 02–025]

Honeywell International, Inc., Metropolis Works Facility, Metropolis, Illinois; Order Modifying License; (Effective Immediately)

I

Honeywell International, Inc. (''Honeywell'' or the ''licensee'') holds Materials License No. SUB–526, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the licensee to receive, acquire, possess and transfer byproduct and source material in accordance with the Atomic Energy Act of 1954 and 10 CFR parts 30 and 40. Commission regulations at 10 CFR 20.1801, require the licensee to secure licensed material from unauthorized removal or access from controlled or unrestricted areas. Further, License Condition 10 of Materials License No. SUB–526, as amended, requires that the licensee implement and maintain specific measures to control public and private access to the facility as described in the October 1, 1998 enclosure to its application dated September 23, 1998.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission issued a Confirmatory Action Letter, No. RIII–01–005, dated December 21, 2001, to Honeywell, confirming the Licensee's agreement to immediately implement enhanced security measures and review longer term security enhancements to the site. The Commission has now determined that certain compensatory measures should be required to be implemented by the licensee as prudent, interim measures to address the current threat. Therefore, the Commission is imposing interim requirements, set forth in Attachment 1 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. This order supercedes the Confirmatory Action Letter of December 21, 2001. These requirements will remain in effect pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

The Commission recognizes that some of the requirements set forth in Attachment 1 [2] to this Order may already have been initiated by Honeywell in response to previously issued advisories, Confirmatory Action Letter No. RIII–01–005, or on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation. And, although the licensee's response to the Safeguards and Threat Advisories and the December 21, 2001 Confirmatory Action Letter has been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission believes that the response must be supplemented because the current threat environment has persisted longer than expected and as a result, it is appropriate to require certain security measures so that they are maintained within the established regulatory framework. Thus, in order to provide assurance that the licensee is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Materials License No.

[1] Attachment 1 contains SAFEGUARDS information and will not be released to the public.

[2] To the extent that specific measures identified in Attachment 1 to this Order require actions pertaining to the Licensee's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

SUB–526 is modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 63, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 40, *It is hereby ordered, effective immediately, that Materials License No. SUB–526 is modified as follows:*

A. The Licensee shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order. The Licensee shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than July 1, 2002.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. The Licensee shall report to the Commission, when it has achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained pending notification from the Commission that a significant change in the threat environment occurs, or until the Commission determines that other changes are needed following a comprehensive re-evaluation of current safeguards and security programs.

Licensee responses to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 30.6 and 40.5. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, modify, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of March, 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–8139 Filed 4–3–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit 1 (FCS) located in Washington County, Nebraska.

The proposed amendment would add an exception to the technical specifications to perform the surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls while components in excess of those allowed by Conditions a, b, d, and e of Technical Specification (TS) 2.3(2) are inoperable provided they are returned to operable status within one hour. This exception will apply only to the remainder of Cycle 20 and the entirety of Cycle 21.

During the NRC Safety System Design and Performance Capability (SSDPC) inspection in February 2002, station personnel were informed that manual operator actions could not be used in lieu of automatic actions to maintain equipment operable without prior NRC approval. A comprehensive review was conducted of plant procedures that used manual actions in place of automatic actions in order to allow equipment to remain operable. The quarterly Recirculation Actuation Logic Channel Functional Test was identified as one of the tests affected. The licensee determined on March 26, 2002, that the surveillance could not be performed without a technical specification change, as there was insufficient time to make a modification to allow the performance of the test online without taking credit for operator action. This test was due to be performed on March 21, 2002, and will exceed its surveillance frequency and extension on April 21, 2002. Therefore, OPPD has requested an exigent TS change to allow this surveillance to be performed to avoid shutting down the plant.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Allowing performance of the quarterly surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls while components in excess of those allowed by Conditions a, b, d, and e of Technical Specification (TS) 2.3(2) are inoperable provided they are returned to operable status within one hour will not affect the probability of any accident since the performance of the Recirculation Actuation Logic Channel Functional Test is not identified as the initiator of any analyzed event. This allowance applies only to the remaining portion of Cycle 20 and all of Cycle 21. The proposed change will still require that the surveillance test be performed and the required ECCS [emergency core cooling system] systems to be available. The one hour completion time is considered sufficient time to perform the quarterly Recirculation Actuation Logic Channel Functional Test. Additionally, the one hour completion time ensures that prompt action is taken to restore the required ECCS capacity. The administrative controls in place will ensure that all required ECCS components remain available with compensatory dedicated operators. Closure of the recirculation minimum flow valves during testing could adversely affect all HPSI [high pressure safety injection], LPSI [low pressure safety injection] and CS [containment spray] pumps. However, manual operator actions serve to minimize the probability of this occurring and risk analysis concludes that the risk of this is small. This change will not alter assumptions relative to the mitigation of an accident or transient event. The performance of this activity has no affect on any accident scenario. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or change the methods governing plant operation. The proposed change does not involve any physical changes to plant systems, structures or components (SSCs) or the manner in which these SSCs are operated, maintained, modified or inspected. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The most risk significant portion of the Recirculation Actuation Logic Channel Functional Test is the opening of the recirculation minimum flow valve within three minutes of the receipt of a RAS [recirculation actuation signal] signal in order to prevent damage to the HPSI pumps. The manual actions have been determined to be acceptable and does not result in a significant reduction in any margin of safety. The bounding risk for the test is an Incremental Core Damage Probability (ICDP) of approximately 6.2E–09 for the 30 minutes during which the RAS portion of the test is performed. The proposed change does not affect the frequency of the Recirculation Actuation Logic Channel Functional Test. The administrative controls in place will ensure that all required ECCS components remain available. The minimum numbers of ECCS components required by the FCS accident analyses remain available with compensatory dedicated operators. The proposed change will not significantly impact the availability or reliability of the plants systems or their ability to respond to plant transients and accidents. The one hour completion time allowed to satisfy ECCS requirements is acceptable based on the small probability of an event occurring during this time interval that the test is performed, and the desire to minimize plant shutdown transients. The performance of this activity has no affect on any accident scenario. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would

result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 6, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to James R. Curtiss, Esq., Winstron & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 1, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC web

site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of April, 2002.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8241 Filed 4–3–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Draft Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Rated Thermal Power Level

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC has prepared a draft environmental assessment of a request by Carolina Power & Light Company (CP&L or the licensee) for a license amendment to increase the maximum thermal power level at Brunswick Steam Electric Plant (BSEP), Units 1 and 2, from 2558 megawatts thermal (MWt) to 2923 MWt, which is a power increase of 14.3 percent (approximately 15 percent). As stated in the NRC staff's February 8, 1996, position paper on the Boiling-Water Reactor Extended Power Uprate Program, the staff has the option of preparing an environmental impact statement if it believes an extended power uprate (EPU) will have significant impact on the human environment. The staff did not identify a significant impact from the EPU at BSEP Units 1 and 2; therefore, the NRC staff is documenting its environmental review in an environmental assessment (EA). In accordance with the February 8, 1996, staff position paper, the draft EA and finding of no significant impact is being published in the **Federal Register** with a 30-day public comment period.

DATES: The comment period expires May 6, 2002. Comments received after this date will be considered if practical to do so, but the Commission is able to assure consideration for only those comments received on or before May 6, 2002.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T 6 D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be available electronically at the NRC's Electronic Reading Room link (*http://www.nrc.gov/reading-rm.html*) on the NRC home page or at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Brenda Mozafari, Office of Nuclear Reactor Regulation, Mail Stop O 8 G–9, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–2020, or by e-mail at *blm@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is considering issuance of an amendment to Facility Operating License Nos. DPR–71 and DPR–62, issued to CP&L for the operation of BSEP, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

By letter dated August 9, 2001, CP&L proposed an amendment to the operating licenses for BSEP, Units 1 and 2, to increase the maximum thermal power level by approximately 15 percent, from 2558 MWt to 2923 MWt. The change is considered an EPU because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. The original licensed maximum power level was 2436 MWt, and the NRC staff approved an increase in the licensed maximum power level to 2558 MWt (approximately 5 percent increase) on November 1, 1996. This increase in power was implemented at BSEP in 1997. Therefore, this proposed action would result in an increase of approximately 20 percent over the original licensed maximum power level. The amendment would allow the heat output of the reactor to increase, which would increase the flow of steam to the turbine. This would allow the turbine generator to increase the production of power and increase the amount of heat dissipated by the condenser. Moreover, this would result in an increased temperature in the water being released into the Atlantic Ocean.

The Need for the Proposed Action

CP&L forecasts a 40-percent increase in the demand for electrical power by 2015 in its service area in North Carolina and South Carolina. CP&L can meet this projected increase in power demand by increasing the number of natural gas-fired combustion turbines or by purchasing power from other sources. The cost of adding the additional generating capacity at BSEP is roughly equivalent to the cost of constructing several small combustion turbine units, each producing approximately 50 Megawatts-electrical (MWe). The proposed EPU would increase the electrical output for BSEP Unit 1 from 841 MWe to 958 MWe and for BSEP Unit 2 from 835 MWe to 951 MWe. However, the cost of nuclear power generation is approximately one third of the cost of natural gas power generation. Therefore, the proposed EPU would increase power production capacity at a lower economic cost than the fossil fuel alternatives, such as natural gas, and would not result in additional land disturbances or other environmental impacts that could result from new plant construction.

Environmental Impacts of the Proposed Action

At the time of issuance of the operating licenses for BSEP, the NRC staff noted that any activity authorized by the license for each unit would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of BSEP, which was issued in January 1974. The original operating licenses allowed a maximum reactor power of 2436 MWt. CP&L was granted amendments to the BSEP licenses to increase maximum reactor power level by approximately 5 percent on November 1, 1996. The NRC staff published an Environmental Assessment and Finding of No Significant Impact in support of this uprate in the **Federal Register** on October 28,1996 (61 FR 55673). As part of the application dated August 9, 2001, CP&L submitted a supplement to the BSEP Environmental Report supporting the proposed EPU and providing a summary of its conclusions concerning both the radiological and non-radiological environmental impacts of the proposed action. Based on the NRC staff's independent analyses and the information provided by CP&L, the NRC staff concludes that the environmental impacts of the EPU are bounded by the

environmental impacts previously evaluated in the FES because the EPU would not involve extensive changes to plant systems that directly or indirectly interface with the environment. This EA summarizes the non-radiological and radiological impacts on the environment that may result from the proposed amendments.

Non-Radiological Impacts

Land Use Impacts

The proposed EPU would not modify the current land use at the site significantly over that described in the FES. Three small mechanical draft cooling towers would be erected on the roof of the radwaste building to service the new condensate cooling system. No other expansion of buildings, roads, parking lots, equipment storage or laydown areas, or onsite transmission and distribution equipment, including power line rights-of-way, is anticipated to support this action. No new construction outside of the existing facilities would be necessary. The EPU would not significantly affect material storage, including chemicals, fuels, and other materials stored aboveground or underground.

Cooling Tower Impacts

Each of the three new mechanical draft cooling towers, which would service the condensate cooling system, are approximately 7 meters (m) by 7 m [24 feet (ft) by 24 ft], with a height of approximately 5 m (16 ft). They will be installed on the roof of the radwaste building at an elevation of approximately 20 m (64 ft). The cooling towers would not be readily visible offsite, so there would be no visual or aesthetic impact. The towers are modular in design and construction, and a similar kind of construction is performed onsite during almost every refueling outage without noticeable additional impacts from noise, dust, odors, vibration, traffic, or vehicle exhaust. Therefore, there would be no significant impact from construction of the cooling towers. Each cooling tower would be designed to reject a maximum of approximately 15 MWt (51 million BTU/hr). The expected level of noise from operation of a cooling tower fan would be 84 dBA at a distance of 1.5 m (5 ft); however, the towers would be located on a roof top near the middle of the protected area. Therefore, no added impact from noise is expected offsite. Existing cooling towers, similar in design to the condensate cooling towers, have been in operation for years on the roof of the turbine building at BSEP. No significant fogging, icing, or drifting plumes carrying chemicals or particulate matter have been experienced from these existing cooling towers; therefore, no significant impact would be expected from operation of the condensate cooling towers.

Transmission Facility Impacts

The proposed EPU would not require any physical modifications to the transmission lines. Increased current would be the only change in design or operation of the transmission lines needed to support the EPU. CP&L's transmission line right-of-way maintenance practices, including the management of vegetation growth, would not be affected. No new requirements or changes to onsite transmission equipment, operating voltages, or transmission line rights-of-way would be necessary to support the EPU. The main plant transformers will be modified and replaced to support the uprate; however, replacement of the transformers would have been required before the end of plant life as part of the licensee's ongoing maintenance program; therefore, no significant environmental impact beyond that considered in the FES is expected from this kind of replacement of onsite equipment.

The increased electrical current would cause an increased electromagnetic field around the transmission lines, and the potential for chronic effects from these fields continues to be studied and no scientific consensus has been reached. However, since the increase in power level is approximately 15 percent, the impact of exposure to electromagnetic fields from the offsite transmission lines would not be expected to increase significantly over the current impact.

The transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code. Therefore, even with the slight increase in current attributable to the EPU, adequate protection is provided against hazards from electrical shock.

Impacts on Terrestrial Biota

The proposed EPU would not involve any land disturbance; all construction will be on the roof of the pre-existing radwaste building. Also, once construction is completed, the uprate would not increase noise levels outside the plant site or increase the size of the workforce, nor would CP&L's transmission line rights-of-way maintenance practices change. Therefore, the uprate would not disturb the habitat of any terrestrial plant or animal species. In 1998, CP&L conducted a study to update information about the potential existence of sensitive plant and animal species in the plant environs. Two endangered perennial herbs, rough-leaved loosestrife and Cooley's meadowrue, occur in the BSEP transmission line rights-of-way. The red-cockaded woodpecker, an endangered bird, occurs in the mature pine forests in Brunswick County. The uprate would not disturb the habitat for any of these species, and CP&L has instituted measures to protect and manage the two endangered herbs by agreement with the North Carolina Natural Heritage Program. Therefore, no significant impact on terrestrial biota would be expected from the uprate.

Water Use Impacts

BSEP uses a once-through cooling system to remove heat from the reactor coolant in the condensers. An intake canal approximately 5 kilometers (km) (3 miles) in length feeds water from the Cape Fear River to the BSEP intake structure. The water passes through tubes in the condensers removing heat from the reactor coolant. Then the water passes through a discharge canal 10 km (6 miles) in length to Caswell Beach. At Caswell Beach, the water is pumped approximately 600m (2000 ft) offshore and discharged at the bottom of the Atlantic Ocean.

The proposed EPU would not involve any increase in the rate of withdrawal of water from the intake canal or the Cape Fear River. Makeup water for the new condensate cooling system would be obtained from the Brunswick County water system; the maximum anticipated flow of makeup water would be approximately 23.7 liters per second [375 gallons per minute (gpm)]. CP&L consulted with Brunswick County water system management officials, who indicated that the additional water use would be well within the capacity of the County water system. Therefore, the uprate would not have a significant impact on water usage by BSEP and would not create a water use conflict.

Discharge Impacts

Surface water and wastewater discharges at BSEP are regulated by the State of North Carolina via a National Pollutant Discharge Elimination System (NPDES) permit. This permit is periodically reviewed and renewed by the North Carolina Department of Environment and Natural Resources (NCDENR). The EPU would increase the temperature of the water discharged to the Atlantic Ocean. Also, the blowdown from the new cooling towers would be piped to the existing storm drain system

and empty into a storm drain basin. Water from the storm drain basin is pumped into a stabilization pond; discharges from the stabilization pond flow into the BSEP intake canal.

In 2001, CP&L analyzed the effect of the proposed EPU on the water temperatures in the Atlantic Ocean in the area of the BSEP discharge. First, historical data, such as intake temperatures, discharge temperatures, plant operating conditions, and meteorological conditions, were used to develop isothermal distribution maps. Then, isothermal distribution maps were projected using the expected heat rejection rates for the uprate condition. Based on these analyses, CP&L submitted an application to the NCDENR for renewal of the BSEP NPDES permit with the following revisions to support the uprate:

1. Area of surface water temperature increase up to 7 degrees Fahrenheit (F) [3.9 degrees Celsius (C)] in the plume extending from the discharge point in the Atlantic Ocean shall not exceed 120 acres [50 hectares (ha)]. The current limit is approximately 60 acres (24 ha).

2. Area of surface water temperature increase up to 1.44 degrees F (0.8 degrees C) during June–August [3.96 degrees F (2.2 degrees C) during September–May] should not exceed 2000 acres (800 ha). The current limit is 1000 acres (400 ha).

3. Area of bottom water temperature increase up to 7 degrees F (3.9 degrees C) shall not exceed 4 acres (1.6 ha). The current limit is 2 acres (0.8 ha).

4. Bottom water temperature increase shall not exceed 7 degrees F (3.9 degrees C) beyond a distance of 1000 ft (300 m) from the discharge point. The current limit is 500 ft (150 m).

BSEP has been operating within the current limits; therefore, these limits represent an upper bound of the current impact on ocean water temperatures in the vicinity of the discharge. The proposed limits to support the uprate similarly represent the expected upper bound of the impact on ocean water temperatures if the uprate were fully implemented.

The maximum blowdown flow from all three condensate cooling towers into the storm drain system would be approximately 8.2 liters per second (130 gpm). Water treatment chemicals would be added to the condensate cooling system—approximately 409 liters (108 gallons) per year of ChemTreat CL–216 (a biocide) and approximately 1567 liters (414 gallons) per year of ChemTreat CL–4800 (a dispersant). These chemical additions were included in the application to NCDENR for the renewed NPDES permit. The volume of the blowdown would be small compared to the volume of the storm drain basin, and it would be diluted even further in the stabilization pond and the intake canal. The blowdown from the existing cooling towers on the roof of the turbine building follows the same discharge path. Therefore, no significant additional impact would be expected from the blowdown discharged from the condensate cooling system.

Impacts on Aquatic Biota

The flow rate of water being withdrawn from the intake canal at the intake structure would not increase, and no change would be made in the design of the intake structure screens. Therefore, no increase in the entrainment of planktonic organisms or in the impingement of fish, shellfish, or sea turtles would be expected.

CP&L has conducted thermal studies in the Atlantic Ocean in the vicinity of the BSEP discharge for over 25 years; no adverse impacts on fish and shellfish have been observed. The expected increase in water temperature would be expected to be small and limited to a relatively small area in the Brunswick County coastline. The increase in water temperature would not be expected to exceed 4 degrees C (7 degrees F) beyond an area of 50 ha (120 acres) at the surface, and the increase would not be expected to exceed 2 degrees C (4 degrees F) beyond an area of 800 ha (2000 acres). The affected area would be expected to be even smaller near the bottom. There is no critical habitat in the vicinity of the ocean discharge; the ocean floor is sandy flats with no natural features that would attract fish and invertebrates. Some of the more abundant organisms (brown shrimp, white shrimp, and croaker) in the vicinity of the discharge point tolerate temperatures of up to 86 degrees F without experiencing loss of equilibrium, and most organisms could avoid the area of higher water temperature. There is a net westward drift of the near-shore coastal waters in the vicinity of the discharge point; therefore, most larvae would enter the estuary from offshore waters to the east and would not be expected to be affected by the discharge plume. Therefore, the uprate would not be expected to significantly impact aquatic biota in the vicinity of BSEP.

CP&L's 1998 study indicated that three Federally listed aquatic species could be potentially affected by BSEP: loggerhead sea turtle (threatened), green sea turtle (threatened), and Kemp's ridley sea turtle (endangered). Of the three, the loggerhead sea turtle has been most commonly collected in the intake canal, although all three of these turtle species have been collected. CP&L employs protective measures, such as blocker panels in the diversion structure, to prevent turtles from entering the canal and patrols of the intake canal to remove turtles. The National Marine Fisheries Service (NMFS) reviewed data from BSEP on incidental takes of sea turtles and the protective measures employed at BSEP. In January 2000, NMFS concluded that BSEP operation ''is not likely to jeopardize the continued existence of the loggerhead, leatherback, green, hawksbill, or Kemp's ridley sea turtles.'' Since the withdrawal rate of water from the intake canal would not increase due to the EPU and the sea turtles can easily swim around the small higher-temperature discharge plume, no increased impact would be expected for the sea turtles beyond that considered in the NMFS Biological Opinion of January 2000.

Social and Economic Impacts

The NRC staff has reviewed information provided by the licensee regarding socioeconomic impacts. CP&L is a major employer in the community with approximately 750 full-time employees and 235 contract employees. CP&L is also a major contributor to the local tax base. CP&L personnel also contribute to the tax base by paying sales and property taxes. The proposed EPU would not significantly affect the size of the BSEP labor force and would have no material effect upon the labor force required for future outages after all stages of the modifications needed to support the uprate are completed. Because the plant modifications needed to implement the uprate would be minor, any increase in sales tax and additional revenue to local and national business will be negligible relative to the large tax revenues generated by BSEP. The EPU would increase the plant's equalized assessed value, which would result in increased tax revenues for Brunswick County. It is expected that the proposed uprate will reduce incremental operating costs, enhance the value of BSEP as a power-generating asset, and lower the probability of early plant retirement. Early plant retirement would be expected to have a significant negative impact on the local economy and the community as a whole by reducing tax revenues and limiting local employment opportunities, although these effects could be mitigated by decommissioning activities in the short term.

Summary

In summary, the proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, water use, waste discharges, cooling tower operation, terrestrial and aquatic biota, transmission facility operation, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at BSEP.

Table 1.—Summary of Non-Radiological Environmental Impacts

Land Use: No change in land use or aesthetics; three small cooling towers on top of radwaste building.

Cooling Tower: No change in visual or aesthetic impact; no added impact on noise level; no significant impact from modular construction of the cooling towers; no significant fogging, icing, or drifting plumes.

Transmission Facilities: No physical modifications to the transmission lines and facilities; meet shock safety requirements; no changes to right-of-ways; small increase in electrical current would cause small increase in electromagnetic field around the transmission lines.

Terrestrial Biota: No additional impact on endangered herbs and birds or other terrestrial biota.

Water Use: No increase in the rate of withdrawal of water from the Cape Fear River; up to an additional 23.7 liters per second (375 gpm) of water from Brunswick County supply system, approved by County.

Discharge: Increase in area of plume in Atlantic Ocean with increased water temperature from 400 to 800 ha (from 1000 to 2000 acres) [area of 0.8 degrees C (1.44 degrees F) isotherm in Summer]; up to an additional 8.2 liters per second (130 gpm) of blowdown water discharged to storm drain system with small amount of biocide and dispersant chemicals; application for revised NPDES permit under review by State of North Carolina.

Aquatic Biota: No expected increased impact on endangered sea turtles or other aquatic biota.

Social and Economic: No significant change in size of BSEP workforce.

Radiological Impacts

Radioactive Waste Stream Impacts

BSEP uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of 10 CFR part 20, ''STANDARDS FOR PROTECTION AGAINST RADIATION,'' and 10 CFR part 50, ''DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES,'' Appendix I. These radioactive waste streams are discussed in the FES. The proposed EPU would not result in changes in the operation or design of equipment in the gaseous, liquid, or solid waste systems. The uprate would not introduce new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled release of radioactive material. The uprate will not affect the environmental monitoring of any of these waste streams or the radiological monitoring requirements contained in licensing basis documents.

Gaseous Radioactive Waste and Offsite Doses

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environs, including small quantities of noble gases, halogens, particulates, and tritium, such that the doses to individuals offsite are maintained within the limits of 10 CFR part 20 and the dose design objectives of Appendix I to 10 CFR part 50 (10 CFR part 20 includes the requirements of the U.S. Environmental Protection Agency (EPA) regulation 40 CFR part 190, ''ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR NUCLEAR POWER OPERATIONS''). The gaseous waste management systems include the offgas system and various building ventilation systems. CP&L estimates that the resulting increase in gaseous radioactive effluents would be bounded in direct proportion to the increase in power—15 percent. CP&L indicated that a 15-percent increase in the amount of gaseous radioactive material released annually from BSEP in the last several years would still be well below the estimates presented in the FES. The NRC staff has independently reviewed the information presented by the licensee and confirmed the licensee's conclusion.

CP&L also calculated the potential increase in the maximum radiation dose to a member of the public in the environs offsite at BSEP from the proposed EPU. A 15-percent increase in the quantity of gaseous radioactive effluents released to the release data for the worst year in the 5-year timeframe from 1996 to 2000 would still result in doses below 1 percent of the dose design objectives of Appendix I to 10 CFR part 50. Therefore, the increased impact of the uprate on offsite doses from gaseous effluents would not be significant.

Liquid Radioactive Waste and Offsite Dose

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environs, such that the doses to individuals offsite are maintained within the limits of 10 CFR part 20 and the dose design objectives of Appendix I to 10 CFR part 50. The liquid radioactive waste systems are designed to cleanup and recycle as much water as practicable; the liquid effluents that are released are continuously monitored and discharges terminated if effluents exceed preset levels of radioactive material. CP&L estimates that the amount of radioactive material released in liquid effluents would not increase significantly. CP&L indicated that the amounts of liquid radioactive material that have been released from BSEP in the last several years are well below the estimates presented in the FES. CP&L expects little or no increase in the quantity of radioactive material released in liquid effluents as a result of the uprate. The NRC staff has independently reviewed the information presented by the licensee and confirmed the licensee's conclusions. In addition, the calculated doses to members of the public offsite associated with these levels of release of radioactive liquid are below 1 percent of the dose design objectives of Appendix I to 10 CFR part 50. Therefore, the increased impact of the uprate on offsite doses from liquid effluents would not be significant.

Solid Radioactive Wastes

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. The largest volume of solid radioactive waste at BSEP is low-level radioactive waste; sources of this low-level waste include spent resins, filters, charcoal, sludges from water processing, oil, and dry active waste, which is essentially contaminated trash. During the last several years, CP&L has implemented waste handling procedures to reduce the volume of low-level waste generated at BSEP. The volume of low-level radioactive waste generated in 2000 was approximately 389 cubic meters (13,877 cubic ft). The proposed EPU would increase the volume of spent resins, filters, and sludges because the uprate would produce more radioactive

material that would have to be removed by processing systems such as the demineralizers in the condensate system. The licensee estimates that the volume of such wastes could increase by as much as 15 percent, consistent with the EPU. Even with such an increase, the expected volume of low-level radioactive waste would be well below the value in the FES. No significant increase would be expected in the production of the other types of low-level waste.

In addition to the low-level wastes, the proposed EPU would result in replacement of 135 control rod blades at each unit. This replacement would occur in stages during the next several refueling outages. The removed control rod blades would be stored in the spent fuel pool, as is commonly done with irradiated reactor components, until they can be prepared for shipping and disposal offsite. These control rod blades would not contribute significantly to the overall volume of solid radioactive waste handled at BSEP.

The proposed EPU would also result in a greater percentage of the fuel assemblies being removed from the reactor core and replaced with new fuel assemblies during each refueling outage. Currently, 212 fuel assemblies (approximately 39 percent) are replaced during each refueling; 256 fuel assemblies (approximately 47 percent) would be replaced each refueling to support the uprated power level. Since CP&L limits the amount of spent fuel stored at BSEP and stores the rest of the spent fuel from BSEP in the spent fuel storage pools at CP&L's Shearon Harris Nuclear Power Plant (SHNPP), no increased volume of spent fuel would be expected to be stored at BSEP as a result of the uprate. By letter dated December 21, 2000, the NRC granted CP&L an amendment to the operating license for SHNPP to allow storage of spent fuel in all four spent fuel storage pools at SHNPP. CP&L has stated that the pools at SHNPP have sufficient storage capacity to handle the additional spent fuel assemblies that would be generated as a result of the proposed EPU at BSEP. An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on December 21, 1999 (64 FR 71514), to address the environmental impact of fully utilizing the storage capacity of all four spent fuel pools at SHNPP. The NRC staff concludes that the 1999 EA bounds the impact of storage of the additional spent fuel assemblies that would be generated by the BSEP uprate in the SHNPP spent fuel pools.

In-plant Radiation Doses

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in some areas at BSEP. Potentially, the increase could be as much as 15 percent, consistent with the proposed 15-percent increase in reactor power. However, CP&L expects that the BSEP radiation protection staff will be able to minimize the resultant increase in radiation doses to the plant staff to a level well below the 15-percent upper-bound estimate by using commonly known methods, such as installation of additional shielding or more effective systems to remove more radioactive material from process streams such as the condensate system. BSEP has reduced the amount of radiation dose received by the plant workers over the last several years. The collective occupational dose for year 2000 at BSEP (including both units) was approximately 3.22 person-Sieverts (Sv) (322 person-rem); the average dose for a boiling-water reactor unit in the U.S. in year 2000 was 1.74 person-Sv (174 person-rem). The FES did not discuss occupational dose; however, other FESs published shortly after the BSEP FES estimated the environmental impact from occupational dose to be 500 person-rem (Sievert unit did not exist at that time) of collective occupational dose per year per reactor unit. Therefore, the collective dose at BSEP would not be expected to increase significantly as a result of the uprate and would be well within the impact commonly estimated in FESs in the 1970s.

Direct Radiation Doses Offsite

Direct radiation from radionuclides (mainly nitrogen-16) in the main steam system components in the turbine building is scattered by the air above the site and provides another offsite public dose pathway (skyshine) from an operating boiling-water reactor. CP&L has routinely monitored the whole body dose rate offsite using thermoluminescent dosimeters; the licensee has also performed surveys offsite with pressurized ion chambers. Data from these monitoring methods indicated that the highest annual offsite dose from skyshine at the site boundary from 1999 to 2001 was 7 millirem (mrem) (.07 mSv). Nitrogen-16 production is increased by routine hydrogen gas injection into the reactor feedwater (hydrogen water chemistry) in an effort to prevent intergranular stress corrosion cracking of reactor internals. The annual whole body dose equivalent to a real member of the public (beyond the site boundary) is limited to 25 mrem (0.25 mSv) by 40 CFR part 190. Assuming a 15-percent increase in the doses from skyshine (consistent with a 15-percent EPU), the expected annual dose would be expected to increase to approximately 8 mrem (0.8 mSv), still well below the annual dose limit of 40 CFR part 190. The licensee will continue to perform surveys as the proposed EPU is implemented to assess the combined impact of hydrogen water chemistry with the uprate to ensure continued compliance with the requirements of 40 CFR part 190. Therefore, the increased impact of the uprate on offsite doses from direct radiation sources would not be significant.

Postulated Accident Doses

The NRC staff has reviewed the licensee's analyses and performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. As a result of implementation of the proposed EPU, there could be an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent on power level; therefore, the core inventory of radionuclides could increase by as much as 15 percent. The concentration of radionuclides in the reactor coolant may also increase by as much as 15 percent; however, this concentration is limited by the BSEP Technical Specifications and is more dependent on the degree of leakage occurring through the fuel cladding. The overall quality of fuel cladding has improved since the mid-1970s when the FES was published, and BSEP has been experiencing very little fuel cladding leakage in recent years. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration is part of the source term considered in some of the postulated accident analyses. Finally, as previously discussed above, some of the radwaste streams and storage systems evaluated for postulated accidents may contain slightly higher quantities of radionuclides. For those postulated accidents where the source term increased, the calculated potential radiation dose to individuals at the site boundary (the exclusion area) and in the low population zone would be increased over the values presented in the FES. Any such increase in calculated accident doses would not be expected to be more than 15 percent higher, and the calculated doses would still be below the acceptance criteria of 10 CFR part 100, ''REACTOR SITE

CRITERIA,'' and the Standard Review Plan (NUREG–0800). Also, no modifications in the plant design or operation would be made that would significantly increase the probability of an accident. Therefore, the NRC staff concludes that the uprate would not significantly increase the probability or consequences of accidents and would not result in a significant increase in the radiological environmental impact of BSEP under accident conditions.

After many years of reactor experience and research, the NRC approved an alternative radiological source term methodology for power reactors. The alternative source term is codified in 10 CFR 50.67 and described in Regulatory Guide 1.183, ''Alternative Radiological Source Term for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' which was published in July 2000. This methodology also uses the Total Effective Dose Equivalent methodology, which is recommended by the International Commission on Radiation Protection and the National Council on Radiation Protection and Measurements. CP&L submitted a proposal to the NRC to implement the alternative source term for the BSEP accident analyses; therefore, the application for the proposed EPU assessed the postulated accidents discussed in the FES using the new methodology. CP&L concluded that the new calculated doses for the uprate met all the applicable acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. The results of the NRC staff's calculations will be presented in the safety evaluation to be issued with the license amendments.

Fuel Cycle and Transportation Impacts

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic EA (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burnups less than 60,000 megawatt (thermal)-days per metric ton of uranium-235 (MWd/MTU). CP&L has concluded that the fuel enrichment at BSEP will increase to approximately 4.4 percent as a result of the proposed EPU with burnup remaining at approximately 45,000 MWd/MTU. Because the fuel enrichment for the uprate will not exceed 5 weight percent uranium-235 and the rod average discharge burnup for the uprate will not exceed 60,000 MWd/MTU, the environmental impacts of the uprate will remain bounded by the conclusions in Tables S–3 and S–4 and are not significant.

Summary

The proposed EPU would not significantly increase the probability or consequences of accidents, would not introduce any new radiological release pathways, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU at BSEP.

Alternatives to Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.,* the ''no-action alternative''). Denial of the application would result in no change in the current environmental impacts; however, other fossil-fueled generating facilities would be built in CP&L's service area in North Carolina and South Carolina in order to maintain sufficient power-generating capacity. Construction and operation of a fossil-fueled plant would create impacts in air quality, land use, and waste management. Implementation of the proposed EPU would have less impact on the environment than the construction and operation of a new fossil-fueled generating facility and does not involve environmental impacts that are significantly different from those presented in the 1974 FES and the 1996 EA for BSEP.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the 1974 FES and the 1996 EA for BSEP.

Table 2.—Summary of Radiological Environmental Impacts

Gaseous Effluents & Doses: Up to 15-percent increase in amount of radioactive material in gaseous effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.

Liquid Effluents & Doses: No significant increase in amount of radioactive material in liquid effluents; within FES estimate; offsite doses would continue to be well within NRC criteria.

Solid Radioactive Waste: Up to 15-percent increase in volume of low-level solid radwaste; increases in amount of spent control rod blades and spent fuel assemblies.

Inplant Dose: No significant increase in collective occupational dose expected.

Direct Radiation Dose: Up to 15-percent increase in dose rate offsite from skyshine; expected annual dose continues to meet NRC/EPA criteria.

Postulated Accidents: Up to 15-percent increase in calculated doses from some postulated accidents; calculated doses within NRC criteria.

Fuel Cycle & Transportation: Fuel enrichment and burnup would continue to be within bounding assumptions for Tables S–3 and S–4 in 10 CFR part 51, ''ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS''; conclusions of tables regarding impact would remain valid.

Agencies and Persons Consulted

In accordance with the its stated policy, on March 29, 2002, the NRC staff consulted with the North Carolina State official , Mr. J. James, of the North Carolina Department of Environment, Commerce and Natural Resources, 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 EA, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated August 9, 2001, as supplemented October 17, November 1, 7, 28, and 30, December 4, 10, 17 (2 letters), and 20, 2001, January 20, February 1, 4, 13, 14, 21 (2 letters), and 25 (3 letters), and March 4, 5, 7, 14, 20, 22, and 25, 2002. Documents may be examined and/or copied for a fee at the NRC's PDR, 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). If you do not have access to ADAMS or if there are problems in

accessing the documents located in ADAMS, contact the NRC PDR Reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of March 2002.

For the Nuclear Regulatory Commission.

John M. Goshen,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8138 Filed 4–3–02; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice; change of meeting location and time.

SUMMARY: The U.S. Commission on Ocean Policy will hold its fourth regional meeting, the Commission's sixth public meeting, to hear and discuss coastal and ocean issues of concern to the Southwest region of the United States, covering the coastal area of California. Notice of this meeting was originally published on March 25, 2002. The purpose of this second notice is to provide the new meeting location and time.

DATES: Public meetings will now be held Thursday, April 18, 2002 from 10:30 a.m. to 6:15 p.m. and Friday, April 19, 2002 from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is now the John M. Olguin Auditorium, Cabrillo Marine Aquarium, 3720 Stephen White Drive, San Pedro, California.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by April 10, 2002 to the meeting Point of Contact. Public comment periods are scheduled for Thursday, April 18 and Friday, April 19. The agenda for the meeting, including specific times for the public comment periods, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: March 29, 2002.

Thomas R. Kitsos,

Executive Director, Commission on Ocean Policy.

[FR Doc. 02–8125 Filed 4–3–02; 8:45 am]

BILLING CODE 6820–WM–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2002 Circular A–133 Compliance Supplement.

SUMMARY: On April 9, 2001 (66 FR 18517), the Office of Management and Budget (OMB) issued a notice of availability of the 2001 Circular A–133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 2001 Circular A–133 Compliance Supplement. The 2002 Supplement has been updated to add 8 additional programs, updated for program changes, and makes technical corrections. A list of changes to the 2002 Supplement can be found at Appendix V of the supplement. Due to its length, the 2002 Supplement is not included in this Notice. See Addresses for information about how to obtain a copy. This Notice also offers interested parties an opportunity to comment on the 2002 Supplement.

DATES: The 2002 Supplement will apply to audits of fiscal years beginning after June 30, 2001 and supersedes the 2001 Supplement. All comments on the 2002 Supplement must be in writing and received by October 31, 2002. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2002 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock numbers: 041–001–00580–3 (paper) and 041–001–00581–1 (CD–ROM)). The main GPO bookstore is located at 710 North Capitol Street, NW, Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the Grants Management heading from the OMB home page on the Internet which is located at *www.omb.gov.*

Comments on the 2002 Supplement should be mailed to the Office of Management and Budget, Office of Federal Financial Management, Room 6025, New Executive Office Building, Washington, DC 20503. Where possible, comments should reference the applicable page numbers. Electronic mail comments may be submitted to *tramsey@omb.eop.gov.* Please include the full body of the electronic mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, telephone number, and e-mail address of the sender in the text of the message.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, telephone (202) 395–3993.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) received seven comment letters on the 2001 Supplement. The comment letters dealt with various technical issues and changes were made where appropriate.

Mark W. Everson,

Controller.

[FR Doc. 02–8119 Filed 4–3–02; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act

The meeting of the Railroad Retirement Board which was to be held on April 3, 2002, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611, has been canceled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: April 1, 2002.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–8215 Filed 4–2–02; 10:19 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of NetAir.com, Inc.; Order of Suspension of Trading

April 2, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NetAir.com, Inc. (''NetAir''), a Nevada corporation headquartered in Salt Lake City, Utah. Questions have been raised regarding the accuracy of assertions by NetAir, and by others, in its annual report filed on Form 10–KSB for the period ended December 31, 2001, and in press releases concerning, among other things: (1) Netair's ability to commence business operations; (2) the qualifications of NetAir's secretary, Robert Waddell, to perform aircraft appraisals, Netair's purported core business; and (3) the identity of the persons in control of the operations and management of the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on April 2, 2002, through 11:59 p.m. EST on April 15, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–8242 Filed 4–2–02; 2:02 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45674; File No. SR–MSRB–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–14, on Reports of Sales or Purchases

March 29, 2002.

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 March 27, 2002 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–04) as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report (the ''Report''), which has been provided to subscribers each day since January 2000. The report is made available each morning by 7 am and includes details of transactions in municipal securities which were ''frequently traded'' the previous business day. Since the beginning of the Transaction Reporting Program in 1995, ''frequently traded'' securities have been defined as those that were traded four or more times on a given business day.

In designing the transparency reports that appear on the day after trade date (T+1), the Board has adopted the threshold of four trades a day because of the concern that an isolated transaction may not necessarily provide a reliable indicator of ''market price'' and might be misleading to an observer not familiar with the market. At the same time, the Board has made a commitment to review the use of these reports as experience is obtained and eventually to move to transparency reporting on a more contemporaneous and comprehensive basis.[3]

Since 1995, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a T+1 report that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began publishing individual transaction data on frequently traded securities in addition to summarizing their high, low and average prices. The Board has also introduced ''comprehensive'' transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than two weeks after trade date.[4]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that a municipal security is ''frequently traded'' for purposes of the T+1 transparency report. The proposed rule change would lower the threshold from four to three trades per day.

Impact of Proposed Report on Transparency

The proposed threshold change would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. The present report, with a threshold of four or more trades per day, includes an average of 11,600 trades in 1,100 different issues, with a total par value of about 3.9 billion

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* ''Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information,'' *MSRB Reports,* Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the Commission noted that the Board, in proceeding to subsequent levels of transparency, ''should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading.'' *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[4] The first comprehensive report was introduced in October 2000 and listed all trades after a one-month delay. The latest comprehensive report began operation in November 2001 and has a two-week delay. See Securities Exchange Act Release No. 44894 (October 2, 2001), 66 FR 51485 (October 9, 2001).

dollars. Under the proposed threshold, the report is expected to include an average of 14,400 trades in 2,600 issues, with a total par value of about 5.2 billion dollars. This represents a 24 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 33 percent increase in par value reported.[5]

Description of Service

The enhanced Daily Transaction Report with the three-trade threshold will replace the current report and will be available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions will continue should the proposed Service be implemented. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

Implementation Schedule

The enhanced report will be available to subscribers as soon as practical after SEC approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 the foregoing. Including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–04 and should be submitted by April 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8137 Filed 4–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45679; File Nos. SR–NASD–2002–21; SR–NYSE–2002–09]

Self-Regulatory Organizations: Notice of Extension of the Comment Period for the Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Research Analyst Conflicts of Interest

April 2, 2002.

On February 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASDR''), and on February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') proposed rule changes, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] relating to research analyst conflicts of interest. A complete description of the proposed rule changes is found in the notice of filing, which was published in the **Federal Register** on March 14, 2002.[3] The comment period expires on April 4, 2002. The Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.[4] Accordingly, the comment period shall be extended until April 18, 2002.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 offices of the Self-Regulatory Organizations. All submissions should refer to File Nos. SR–NASD–2002–21 and SR–NYSE–2002–09 and should be submitted by April 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8302 Filed 4–3–02; 8:45 am]

BILLING CODE 8010–01–P

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[5] These data are based upon market activity from April 1, 2001 through July 31, 2001.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45526 (March 8, 2002), 67 FR 11526.

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending May 19, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6246.

Date Filed: May 18, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 8, 2000.

Description: Motion of Delta Air Lines, Inc. for leave to file and Supplement #3, pursuant to 49 U.S.C. 41102 and 41108 and Subpart B, supplementing its September 21, 1999, certificate application by adding Turks and Caicos to the list of countries included in Exhibit A (Revised), attached to Supplement #2 to Delta's application, filed December 29, 1999.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7718 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 3, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6246.

Date Filed: November 1, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 22, 2000.

Description: Motion of Delta Air Lines, Inc. for leave to file and Supplement #4, pursuant to 49 U.S.C. 41102 and 41108 and Subpart B, supplementing its September 21, 1999, certificate application by adding the following points: Comoros, Cyprus, Dominica, French Guiana, French Polynesia, Lesotho, Macau, Maldives, Marshall Islands, Micronesia, Federated States of Mongolia, Palau, Qatar, St. Kitts & Nevis, St. Vincent & Grenadines, Samoa and Swaziland to the list of countries included in Exhibit A (Second Revised), attached to Supplement #3 to Delta's application, filed May 18, 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7719 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 31, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6246.

Date Filed: December 29, 1999.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 2000.

Description: Motion of Delta Air Lines, Inc., for leave to file and Supplement #2, pursuant to 49 U.S.C. 41102 and 41108 and Subpart Q, supplementing its September 21, 1999, certificate application by adding Portugal to the list of countries included in Exhibits A and A–2, attached to its initial application and first supplement.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–7720 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary; Availability of the Federal Radionavigation Plan

AGENCY: Office of the Assistant Secretary for Transportation Policy, DOT.

ACTION: Availability of the Federal Radionavigation Plan.

SUMMARY: The 2001 edition of the Federal Radionavigation Plan (FRP) has been published and is available for comment. The policies in the 2001 FRP focus on transition to GPS based services as a primary means of navigation, recognizing the need to maintain backup navigation aids and provide redundant radionavigation service where required. The 2001 FRP projects an initial operating capability for the FAA Wide Area Augmentation System in 2003. The FAA's Local Area Augmentation System is planned to begin public service in 2006. The 2001 FRP also includes a revised schedule for phasing down land-based navigation aids. The phase down of most land-based navigation aids operated by the FAA will begin in 2010. The FAA does not plan phasing out any Instrument Landing Systems (ILSs) for Category II and III approaches. The U.S. will continue operating Loran-C in the short term while the Administration continues to evaluate the long-term need for the system. Maritime radiobeacons not used for differential GPS have been phased out. Stand-alone aeronautical nondirectional beacons (NDBs) will be phased out starting in 2010. NDBs used as compass locators for ILSs will be phased out when the underlying ILSs are withdrawn. All comments, concerns, and suggestions regarding the current policies and plans in the 2001 FRP will be considered in formulation of the 2003 FRP.

DATES: Comments must be received by December 31, 2002 for consideration in development of the 2003 FRP.

ADDRESSES: Comments should be forwarded to the Chairman, DOT POS/NAV Working Group, U.S. Department of Transportation (P–7), Room 10315, 400 Seventh Street, SW, Washington, DC 20590. E-mail: *michael.shaw@ost.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Shaw, Department of Transportation (P–7), 400 7th Street, SW, Washington, DC, 20590, (202) 366–0353.

SUPPLEMENTARY INFORMATION: Beginning with this edition of the FRP, Federal radionavigation information previously contained in a single document will be published in two separate documents, the Federal Radionavigation Plan and a companion document entitled Federal Radionavigation Systems (FRS). The FRP includes the introduction, policies, operating plans, system selection considerations, and R&D sections and will allow more efficient and responsive updates of policy and planning information. Sections relating to government roles and responsibilities, user requirements, and systems descriptions have been moved to the companion FRS and will be updated as necessary.

Free copies of the 2001 FRP are available on CD ROM from the Volpe National Transportation System Center, Kendall Square, Cambridge, Mass. 02142. The telephone number there is (617) 494–2908. The 1999 FRP is also on the Internet World Wide Web at *http://www.navcen.uscg.gov/pubs/frp2001.*

Issued in Washington, DC, on March 28, 2002.

Linda L. Lawson,

Acting Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 02–8185 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–27]

Petition for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and dispositions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or ommission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 29, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–11487.

Petitioner: Bombardier Aerospace, Learjet, Inc.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/Disposition: To permit Learjet to assign a copy of its repair station inspection procedures manual (IPM) to key individuals within departments and make the IPM available to all other repair station personnel rather then give a copy of the manual to each of its supervisory and inspection personnel.

Grant, 03/26/2002, Exemption No. 7240A.

Docket No.: FAA–2002–11562

Petitioner: United Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.697(a)(3), (b), (c), and (d) and 121.709(b)(3).

Description of Relief Sought/Disposition: To permit Untied Airlines to use computerized signatures to satisfy the airworthiness release signature requirements of part 121 in lieu of physical signatures.

Grant, 03/26/2002, Exemption No. 5151G.

[FR Doc. 02–8150 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2002, there were five applications approved. This notice also includes information on one application, approved in October, 2000, inadvertently left off the October 2000 notice. Additionally, 19 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Sarasota Manatee Airport Authority, Sarasota, Florida.

Application Number: 00–04–C–00–SRQ.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $36,126,915.

Earliest Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: October 1, 2015.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Sarasota Bradenton International Airport.

Brief Description of Project Approved for Collection and Use: Airport terminal development.

Decision Date: October 3, 2000.

For Further Information Contact: Vernon P. Rupinta, Orlando Airports District Office, (407) 812–6331, ext. 24.

Public Agency: Palm Beach County Department of Airports, West Palm Beach, Florida.

Application Number: 02–06–U–00–PBI.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to Be Used in this Decision: $64,684,000.

Charge Effective Date: December 1, 2000.

Estimated Charge Expiration Date: December 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: No change from previous approval.

Brief Description of Projects Approved for Use:

Construct taxiway A extension and canal relocation.

Construct perimeter road.

Decision Date: February 12, 2002.

For Further Information Contact: Vernon P. Rupinta, Orlando Airports District Office, (407) 812–6331, ext. 24.

Public Agency: City of Lynchburg, Virginia.

Application Number: 01–03–C–00–LYH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $844,951.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: January 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lynchburg Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment.
PFC development and administration costs.
Acquire aircraft rescue and firefighting vehicle.
Design and install airfield guidance signs.
Design and install precision approach path indicator for runway 3.
Design and install security access control system.
Rehabilitate general aviation apron.
Expand general aviation apron.
Rehabilitate and light access road.
Acquire land for development.
Rehabilitate high intensity runway lights for runway 3/21.
Rehabilitate medium intensity taxiway lights for taxiway B.
Acquire land for runway 21 runway protection zone.
Obstruction removal.
Rehabilitate runway 17/35 (design).
Rehabilitate runway 3/21 (design).
Construct snow equipment/maintenance building.
Acquire passenger lift design.

Brief Description of Disapproved Projects:

Acquire friction measuring equipment.
Acquire security equipment.
Update airport layout plan.

Determination: Disapproved. The FAA has determined that the addition of these projects by letter dated September 4, 2001, after the airline consultation meeting on May 8, 2001, is in violation of § 158.23.

Brief Description of Withdrawn Project: Rehabilitate runways 3/21 and 17/35.

Determination: This project was withdrawn by the public agency by letter dated September 24, 2001. Therefore, the FAA did not rule on this project in this decision.

Decision Date: February 12, 2002.

For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: County Commissioners of Washington County, Hagerstown, Maryland.

Application Number: 02–02–U–00–HGR.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue To Be Used in This Decision: $206,000.

Charge Effective Date: August 1, 1999.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: No change from previous approval.

Brief Description of Project Approved for Use:

Construct snow equipment and maintenance building.

Decision Date: February 21, 2002.

For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: City of Albuquerque, New Mexico.

Application Number: 02–02–C–00–ABQ.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $44,483,079.

Earliest Charge Effective Date: May 1, 2002.

Estimated Charge Expiration Date: December 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information contained on the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Albuquerque International Support (ABQ).

Brief Description of Project Approved for Collection at ABQ and Use at ABQ:

1993 master plan update.
Taxiway E reconstruction.
Taxiways A and B improvements.
Terminal appron expansion.
Runway 3/21 extension and upgrade.
Runway 12/30 extension and reconstruction.
Construct access road.
Construct Support Boulevard.
Expand air cargo apron.
PFC application administration costs.

Brief Description of Project Approved for Collection at ABQ and Use at Double Eagle II Airport:

Apron expansion.
Taxiway improvements.
Runway improvements.

Decision Date: February 27, 2002.

For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, ((817) 222–5613.

Public Agency: Salt Lake City Corporation, Department of Airports, Salt Lake City, Utah.

Application Number: 01–04–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $28,887,570.

Earliest Charge Effective Date: May 1, 2002.

Estimated Charge Expiration Date: February 1, 2003.

Class of Air Carriers Not Required to Collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection and Use at SLC at a $4.50 PFC Level:

Computerized access security system (CASS) upgrade, phase, I.
CASS upgrade, phase II.
Security enhancements.
Security fence upgrade, phase III.
Airfield replacement equipment.
Runway 16L/34R storm drainage improvements.
Concourse A passenger boarding bridge modifications.
Category III and approach lighting system will sequence flashers—II, runway 16R (now runway 16L).
North cargo apron expansion, phase II.
Taxiway H reconstruction—phase III.
Land acquisition.
Schematic design study.
Terminal 1 south expansion.

Brief Description of Projects Approved for Collection and Use at SLC at a $3.00 PFC Level:

Continuous pavement friction test vehicle.
Snow and ice control chemical storage facility.
Owner controlled insurance program professional liability coverage.
Bus access plaza south of TU–1.
Terminal roadway capacity improvements.

Brief Description of Project Approved for Collection at SLC and Use at Airport II at a $3.00 PFC Level: Security fence.

Brief Description of Projects Approved for Collection at SLC and Use at Tooele Valley Airport (TVY) At at $3.00 PFC Level:

Navigational upgrades.
Land acquisition.

Brief Description of Project Partially Approved for Collection and Use at SLC

at a $3.00 PFC Level: Deicing and anti-icing chemical storage facility.

Determination: Partially approved. The storage tank for the deicing fluids is not Airport Improvement Program (AIP) and PFC eligible in accordance with Program Guidance Letter 93–1. 4. Therefore, the approval is limited to the costs associated with the storage building.

Brief Description of Project Partially Approved for Collection at SLC and Use at TVY at a $3.00 PFC Level: Water system.

Determination: Partially approved. Based on information presented to the carriers at the airline consultation meeting, a portion of this project will supply potable water to private airport buildings, which is ineligible under both the PFC and AIP programs. Therefore, the approval was limited to the portion of the system needed for fire suppression.

Brief Description of Disapproved Projects: Emergency power to jetways.

Determination: Disapproved. The FAA has determined that this project does not meet the requirements for emergency power in accordance with paragraph 530a of FAA Order 5100.38A, AIP Handbook (October 24, 2989).

Incinerator replacement.

Determination: Disapproved. The FAA has determined that this project is not AIP or PFC eligible and does not meet the requirement of § 158.15(b). In addition, the project does not meet any PFC objective and, this, does not meet the requirements of § 158.15(a).

Decision Date: February 28, 2002.

For Further Information Contact: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Amendments to PFC Approvals

Amendment No.; City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–03–SJT, San Angelo, TX	11/07/01	$766,009	$655,769	05/01/06	12/01/05
96–02–U–01–SJT, San Angelo, TX	11/07/01	NA	NA	05/01/06	12/01/05
96–02–C–01–CAK, Akron, OH	12/20/01	1,764,490	1,681,810	10/01/99	03/01/98
98–03–C–01–CAK, Akron, OH	12/21/01	2,481,900	1,748,860	02/01/03	09/01/99
93–01–C–06–MDW, Chicago, IL	01/10/02	131,084,161	118,930,037	11/01/44	10/01/45
96–05–C–02–MDW, Chicago, IL	01/10/02	156,538,543	178,087,493	11/01/44	10/01/45
00–07–C–01–MDW, Chicago, IL	01/10/02	592,053,661	611,521,327	11/01/44	10/01/45
99–04–C–03–BGM, Binghamton, NY	01/29/02	1,567,748	1,572,978	04/01/06	04/01/02
*01–03–C–01–LFT, Lafayette, LA	02/14/02	2,323,000	2,323,000	04/01/04	10/01/03
*00–04–C–01–SRQ, Sarasota, FL	02/22/02	36,126,915	38,495,063	10/01/15	02/01/14
92–01–I–03–SPI, Springfield, IL	02/27/02	576,026	639,231	02/01/94	02/01/94
93–02–U–01–SPI, Springfield, IL	02/27/02	NA	NA	02/01/94	02/01/94
95–05–U–01–SPI, Springfield, IL	02/27/02	NA	NA	02/01/94	02/01/94
*93–03–I–05–SPI, Springfield, IL	02/27/02	3,941,493	3,971,208	02/01/06	10/01/07
*97–08–C–02–SPI, Springfield, IL	02/27/02	212,000	375,000	05/01/07	08/01/08
00–05–C–02–MSP, Minneapolis, MN	02/27/02	106,873,838	122,873,838	12/01/02	07/01/03
94–02–C–02–JAC, Jackson, WY	02/27/02	1,145,500	1,146,830	10/01/97	10/01/97
97–03–C–02–02–JAC, Jackson, WY	02/27/02	304,000	304,000	08/01/98	08/01/98
99–03–C–01–DRO, Durango, CO	02/28/02	699,627	730,634	06/01/03	09/01/02

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Lafayette, LA, this change is effective on April 1, 2002. For Sarasota, FL and Springfield, IL, this change is effective on May 1, 2002.

Issued in Washington, DC, on March 27, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–8149 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a revised draft Technical Standard Order (TSO) C–151b, Terrain Awareness and Warning System. The draft TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their terrain awareness and warning systems must meet to be identified with the applicable TSO marking.

DATES: Comments must identify the TSO file number and be received on or before June 29, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C151b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received or the proposed technical standards order may be examined, before and after the comments closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:40 p.m. All communications received on or before the closing date

for comments special above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This is revised TSO that sets forth minimum operational performance standards that a Terrain Awareness and Warning System (TAWS) equipment must meet to be identified with the TSO–C151b Class A, B, or C marking. This revision adds the requirements for a Class C designation.

The standards of this TSO apply to equipment intended to provide pilots and flight crews with both aural and visual alters to aid in preventing an inadvertent controlled flight into terrain (CFIT) accident. Class A and B TAWS equipment are required by 14 CFR Parts 91, 135, and 121. Class C equipment is intended for voluntary installations on aircraft not covered by the TAWS requirements in 14 CFR Parts 91, 135, and 121.

How To Obtain Copies

A copy of the proposed TSO—C151 may be obtained via the information contained in section title **FOR FURTHER INFORMATION CONTACT**. Copies of RTCA Document No. RTCA/DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997, RTCA/DO–161A, Minimum Performance Standards—Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976, RTCA/DO–200A/EURCAE ED–76, ''Standards for Processing Aeronautical Data,'' dated September 18, 1998, and RTCA/DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992, may be purchased from RTCA, Inc. 1828 L Street, NW., Suite 815, Washington, DC 20036.

Nancy Lane,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–8151 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These ICRs pertain to 49 CFR Parts 219, 229, 236, 241, and 244. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to Parts 213, 214, 215, 216, 220, 223, and 239. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved: (1) OMB No. 2130–0550, Rail-Equipment Accident/Incident Cost Study (Form FRA F 6180.105). The expiration date for this information collection is September 30, 2003. (2) OMB No. 2130–0551, Regional Inspection Point Listing Forms (Forms FRA F 6180.106(A)–(E)). The expiration date for this information collection is December 31, 2003. (3) OMB No. 2130–0552, Locomotive Cab Sanitation Standards (NPRM) (49 CFR part 229). The expiration date for this information collection is March 31, 2004. (4) OMB No. 2130–0553, Positive Train Control (NPRM) (49 CFR part 236). The expiration date for this information collection is September 30, 2004. (5) OMB No. 2130–0555, Foreign Railroads' Foreign-Based (FRFB) Employees Who Perform Train or Dispatching Service in the United States (NPRM) (49 CFR part 219). The expiration date for this information collection is January 31, 2005. (6) OMB No. 2130–0556, U.S. Locational Requirement For Dispatching U.S. Rail Operations (49 CFR part 241). The expiration date for this information collection is January 31, 2005. (7) OMB No. 2130–0557, Safety Integration Plans (49 CFR part 244). The expiration date for this information collection is March 31, 2005.

Additionally, the following information collections have been re-approved: (8) OMB No. 2130–0010, Track Safety Standards: Gage Restraint Measurement Systems (49 CFR part 213). The new expiration date for this information collection is March 31, 2004. (9) OMB No. 2130–0504, Special Notice For Repairs (49 CFR part 216). The new expiration date for this information collection is March 31, 2004. (10) OMB No. 2130–0511, Designation of Qualified Persons (49 CFR part 215). The new expiration date for this information collection is March 31, 2004. (11) OMB No. 2130–0524, Railroad Communications (Formerly Radio Standards and Procedures) (49 CFR part 220). The new expiration date for this information collection is November 30, 2004. (12) OMB No. 2130–0539, Railroad Worker Protection: Roadway Maintenance Machines (49 CFR part 214). The new expiration date for this information collection is March 31, 2004. (13) OMB No. 2130–0545, Passenger Train Emergency Preparedness (49 CFR parts 223 and 239). The new expiration date for this information collection is May 31, 2004.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on April 1, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–8184 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 10, 2002. No comments were received.

DATES: Comments must be submitted on or before May 6, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention MARAD Desk Officer.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, MAR–250, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0284, FAX: 202–493–2288, or e-mail: *rita.jackson@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Request for Waiver of Service Obligation; Request for Deferment of Service Obligation; Application for Review of Waiver/Deferment Decisions.

OMB Control Number: 2133–0510.

Type of Request: Extension of currently approved collection.

Affected Public: Students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the State maritime academies who request waivers of service obligations.

Form(S): MA–935; MA–936; MA–937.

Abstract: This information collection is essential for determining if a student or graduate of the U.S. Merchant Marine Academy (USMMA) or subsidized student or graduate of a State maritime academy has a waivable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program.

Annual Estimated Burden Hours: 20 1/2 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 1, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–8158 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11847]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Audi A4 and S4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Audi A4 and S4 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Audi A4 and S4 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 6, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, L.L.C. of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 2001 Audi A4 and S4 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2001 Audi A4 and S4 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 Audi A4 and S4 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Audi A4 and S4

passenger cars, as originally manufactured for sale in Europe, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Audi A4 and S4 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. * * *,* 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

With regard to compliance with the Bumper Standard found in 49 CFR part 581, the petitioner claims that the vehicles are equipped with bumpers and support structures identical to those used on U.S. certified models.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the instrument cluster with U.S.-model components.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps, (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps, (c) installation of a U.S.-model high mounted stop lamp assembly if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* programming of the key warning system at the time the instrument cluster is changed and inspection at the time of conversion.

Standard No. 208 *Occupant Crash Protection:* inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp and audible buzzer that are identical to components installed on U.S.-certified models.

The petitioner states that all vehicles will be inspected for compliance with the parts marking requirements of the Theft Prevention Standard at 49 CFR part 541, and will be marked as necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–8144 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11881]

Notice of Receipt of Petition for Decision That Nonconforming 1999 and 2001 BMW 3 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 and 2001 BMW 3 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 and 2001 BMW 3 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 6, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, L.L.C. of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1999 and 2001 BMW 3 Series passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1999 and 2001 BMW 3 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 and 2001 BMW 3 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1999 and 2001 BMW 3 Series passenger cars, as originally manufactured for sale in Europe, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 and 2001 BMW 3 Series passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

With regard to compliance with the Bumper Standard found in 49 CFR part 581, the petitioner claims that the vehicles are equipped with bumpers and support structures identical to those used on U.S. certified models.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a unit reading in miles per hour; (c) where necessary, replacement of the instrument cluster with a U.S.-model component, and reprogramming of the replacement unit to operate all necessary safety systems, such as chimes and warnings.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps, (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps, (c) installation of a U.S.-model high mounted stop lamp. The petitioner states that often only headlights and taillights need replacement for the vehicles to conform to the standard.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on that mirror.

Standard No. 114 *Theft Protection:* Reprogramming of the vehicle to actuate the appropriate safety systems during conversion of the dash.

Standard No. 118 *Power Window Systems:* Alteration of the power window system to operate the required defeat device during reprogramming of the lights and dash. The petition states that most vehicles have the required defeat devices as standard equipment.

Standard No. 208 *Occupant Crash Protection:* (a) Petitioner states that the vehicles are equipped with a seat belt warning lamp that is identical to the component installed on U.S.-certified models, but that the audible warning buzzer must be programmed to meet the standard.; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles and installation of door bar on those not already so equipped. The petitioner states that the vehicles are equipped with side impact air bags and control systems that are identical to those installed on U.S.-certified models.

The petitioner states that all vehicles will be inspected for compliance with the parts marking requirements of the Theft Prevention Standard at 49 CFR part 541, and will be marked as necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–8145 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11801]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

Annex A

Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2001–11210

Nonconforming Vehicle: 1991 Cadillac Seville passenger cars
Substantially similar
U.S.-certified vehicle: 1991 Cadillac Seville passenger cars
Notice of Petition
Published at: 67 FR 2952 (January 22, 2002)
Vehicle Eligibility Number: VSP–375

2. Docket No. NHTSA–2001–11211

Nonconforming Vehicles: 2002 Harley Davidson VRSCA motorcycles
Substantially similar U.S.-certified vehicles: 2002 Harley Davidson VRSCA motorcycles
Notice of Petition
Published at: 67 FR 2951 (January 22, 2002)
Vehicle Eligibility Number: VSP–374

[FR Doc. 02–8146 Filed 4–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 27, 2002.

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 May 6, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Taxes.

Description: Internal Revenue Code (IRC) sections 6402, 6404, and sections 301.6402–2, 301–6404–1, and 301–6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 125,292.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing, copying assembling, and sending the form to the IRS
Form 8849	3 hr., 35 min.	30 min.	34 min.
Schedule 1	11 hr., 57 min.		12 min.
Schedule 2	7 hr., 39 min.	12 min.	19 min.
Schedule 3	3 hr., 21 min.		3 min.
Schedule 4	4 hr., 46 min.		4 min.
Schedule 5	5 hr., 15 min.	6 min.	11 min.
Schedule 6	4 hr., 32 min.	12 min.	16 min.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,841,954 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 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.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–8179 Filed 4–3–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 28, 2002.

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 May 6, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82 Final.

Type of Review: Extension.

Title: Definition of an S Corporation.

Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress under Subchapter S.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,005 .

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (Non-recurring).

Estimated Total Reporting Burden: 1,005 hours.

OMB Number: 1545–0854.

Regulation Project Number: LR–1214 Final.

Type of Review: Extension.

Title: Discharge of Liens.

Description: The Internal Revenue Service needs this information to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 24 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1638.

Form Number: IRS Form 12196 (formerly Form 7130–A).

Type of Review: Revision.

Title: Small Business Office Order Blank.

Description: Form 12196 is to be used by small business outlets to order IRS tax forms and publications. The form can be faxed directly to the IRS Area Distribution Center for order fulfillment, packaging and mailing.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 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.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–8180 Filed 4–3–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled to take place on Wednesday, April 10, 2002, beginning at 8:30 a.m. and ending at 5:30 p.m. The meeting will be held in Salon A or B, the Four Seasons Hotel, 2400 Pennsylvania Avenue, NW., Washington, DC, and is open to the general public.

The purpose of the Task Force is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and for Department of Defense (DOD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Review barriers and challenges that impede VA and DOD coordination, including budgeting processes, timely billing, cost accounting information technology, and reimbursement. Identify opportunities to improve such business practices to ensure quality and cost effective health care; and

(c) Identify opportunities for improved resource utilization through partnership between VA and DOD to maximize the use of resources and infrastructure, including: buildings, information technology and data sharing

systems, procurement of supplies, equipment and services, and delivery of care.

As the Task Force work groups continue to obtain current and updated information and to validate and/or clarify that information, the work groups will make presentations on their related topics to the members. The work groups include benefit services, acquisition and procurement, facilities, information management and information technology, leadership and productivity, pharmaceuticals, and resource and budgeting process.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery to Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

By Direction of the Secretary.

Dated: March 27, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–8121 Filed 4–3–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
April 4, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7150–8]

RIN 2060–AE82

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the Miscellaneous Organic Chemical Manufacturing source category and the Miscellaneous Coating Manufacturing source category. The Miscellaneous Organic Chemical Manufacturing source category includes many previously unregulated organic chemical processing units at major sources. The Miscellaneous Coating Manufacturing source category includes the manufacture of a number of coatings including paints, inks, and adhesives. The EPA has determined that both source categories include facilities that are major sources of hazardous air pollutants (HAP), including toluene, methanol, xylene, hydrogen chloride, and methylene chloride. Methylene chloride is considered to be a probable human carcinogen and the other pollutants can cause noncancer health effects in humans. These proposed NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources in the relevant source categories to meet HAP emission limitations and work practice standards reflecting the application of the maximum achievable control technology (MACT). The proposed subpart FFFF will reduce HAP emissions by approximately 28,000 Megagrams per year (Mg/yr) (30,900 tons per year (tpy)), and proposed subpart HHHHH will reduce HAP emissions by approximately 5,670 Mg/yr (6,250 tpy).

DATES: Comments: Submit comments on or before June 3, 2002.

Public Hearing: If anyone contacts the EPA requesting to speak at a public hearing by April 24, 2002, a public hearing will be held at 10 a.m. on May 6, 2002.

ADDRESSES: *Comments:* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–04, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–04, U.S. EPA, 401 M Street, SW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: If a public hearing is held, it will be held in the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket: Docket No. A–96–04 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information about the proposed NESHAP, contact Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov. For information about the public hearing, contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607, electronic mail address noell.maria@epa.gov.

SUPPLEMENTARY 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 either as an ASCII file to avoid the use of special characters and encryption problems or 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 docket number: A–96–04. 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: Mr. Randy McDonald, 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 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 NESHAP.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of these proposed NESHAP. 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 NESHAP 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 these proposed NESHAP 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.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *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 those listed in the following table.

Category	SIC	NAICS	Examples of regulated entities
Industry	282, 283, 284, 285, 286, 287, 289, 386.	3251, 3252, 3253, 3254, 3255, 3256, 3259, except 325131 and 325181.	Producers of specialty organic chemicals, paints, coatings, adhesives, inks, explosives, certain polymers and resins, and certain pesticide intermediates.

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 § 63.2435 and § 63.7985 of the proposed NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person 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?

Section 112 of the CAA requires us to list categories and subcategories of major sources and some 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 are described in section I.C. Major sources of HAP are those that are located within a contiguous area and under common control and have the potential to emit greater than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we 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, taking into consideration the cost of achieving the emissions reductions, any nonair quality health and environmental impacts, and energy requirements. 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, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards 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. In considering whether to establish standards more stringent than the floor, we must consider cost, nonair quality health and environmental impacts, and energy requirements.

C. What Is the History of the Source Categories?

1. Initial Source Categories

Section 112 of the CAA requires us to establish rules for categories of emission sources that emit HAP. On July 16, 1992, we published an initial list of 174 source categories to be regulated (57 FR 31576). The listing was our best attempt to identify major sources of HAP by manufacturing category. Following the publication of this listing, we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. At the time the initial list was published, we recognized that we might have to revise the list

from time to time as better information became available.

2. Changes to the Initial List

Based on information we collected in 1995, we realized that several of the original source categories on the list had similar process equipment, emission characteristics and applicable control technologies. Additionally, many of these source categories were on the same schedule for promulgation, by November 15, 2000. Therefore, we decided to combine a number of source categories from the original listing into one broad set of emission standards. On November 7, 1996, we published a notice combining 21 source categories from the initial list of 174 into the Miscellaneous Organic Chemical Processes source category (61 FR 57602).

Twelve of the 21 source categories were listed under the miscellaneous process industry group on the initial list. These include: benzyltrimethylammonium chloride production, carbonyl sulfide production, chelating agents production, chlorinated paraffins production, ethylidene norbornene production, explosives production, hydrazine production, photographic chemicals production, phthalate plasticizers production, rubber chemicals production, symmetrical tetrachloropyridine production, and OBPA/1,3-diisocyanate production. Eight of the 21 source categories were listed under the polymers and resins industry group. These include: alkyd resins production, polyester resins production, polyvinyl alcohol production, polyvinyl acetate emulsions production, polyvinylbutyral production, polymerized vinylidene chloride production, polymethylmethacrylate production, and maleic anhydride copolymers production. The last of the 21 source categories is the manufacture of paints, coatings, and adhesives.

Along with these 21 source categories, the Miscellaneous Organic Chemical Processes category was also defined in the **Federal Register** notice to include organic chemical manufacturing defined by SIC codes 282, 284, 285, 286, 287, 289, and 386 which are not being covered by any other MACT standard. One example is the coverage of batch process vents from reactors in the synthetic organic chemical manufacturing industry (SOCMI) that are excluded from the provisions of the Hazardous Organic NESHAP (HON). Another example, also an exclusion in the HON, is the coverage of HAP emissions from SOCMI processes in which HAP are used only as solvents. The Miscellaneous Organic Chemical Processes source category would also cover production of pesticide intermediates that are not covered by the Pesticide Active Ingredient NESHAP, as well as materials not considered primary products under the Group I and IV Polymers and Resins NESHAP. In addition to the 21 listed source categories, two other source categories are to be subsumed into the Miscellaneous Organic Chemical Processes source category. These are quaternary ammonium compounds production and ammonium sulfate production from caprolactam by-product plants.

3. Grouping Into Two Source Categories

On November 18, 1999, we published a **Federal Register** notice describing changes to the source category list (64 FR 63035). At that time, we also described our intent to group the source categories into two new source categories instead of one. The two new source categories are called the ''Miscellaneous Organic Chemical Manufacturing'' source category and the ''Miscellaneous Coating Manufacturing'' source category. During our review of the data, we decided that the emission sources in the miscellaneous coating manufacturing industry should be regulated differently from other miscellaneous organic chemical processes because their emission stream could be characterized more narrowly and standards could be tailored for these characteristics. For example, coatings manufacturing involves mixing and blending of raw materials at ambient temperatures. Emissions from these operations generally result from the displacement of materials during processing. Therefore, the proposed standards for process vents from coatings process vessels are tailored to specific condenser controls operating on saturated streams at ambient conditions. Conversely, organic chemical manufacturing involves chemical reactions and separation processes conducted at elevated temperatures. Emissions from these processes result from exothermic reactions, vessel heating, gas sparging, depressurizations, displacements, as well as other events, and emission stream characteristics vary in concentration, flowrate, and temperature. Because emission stream characteristics vary extensively in the broader source category, the compliance options are structured to accommodate a wide range of conditions. The difference in conditions and emission characteristics between the two source categories provides the basis for today's proposed NESHAP, which set MACT standards for two separate source categories in the proposed subparts FFFF and HHHHH of 40 CFR part 63.

D. What Are the Health Effects Associated With the Pollutants Emitted From Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing Source Categories?

Today's proposed NESHAP protect air quality and promote the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The HAP emitted by the Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing source categories include but are not limited to methanol, hydrogen chloride, cresols, methylene chloride, methyl ethyl ketone (MEK), toluene, vinyl acetate, xylene, hydrogen fluoride, hexane, and methyl chloride. Exposure to these compounds has been demonstrated to cause adverse health effects.

The HAP that would be controlled with these NESHAP are associated with a variety of adverse health effects. These adverse health effects include chronic (long-term) health disorders (*e.g.,* irritation and damage to nasal membranes; damage to the liver, kidneys, and testicles) and acute health disorders (*e.g.,* irritation of eyes, throat, and mucous membranes; dizziness, headache, and nausea). Three of the HAP have been classified as probable or possible human carcinogens.

We do not have the type of current detailed data on each of the facilities covered by the Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing NESHAP, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the NESHAP will reduce emissions and subsequent exposures.

Acute (short-term) or chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by

inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Dermal contact may produce severe burns, ulceration, and scarring. Chronic occupational exposure to hydrochloric acid has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid in humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified hydrochloric acid for carcinogenicity.

Acute inhalation exposure by humans to mixed cresols results in respiratory tract irritation, with symptoms such as dryness, nasal constriction, and throat irritation. Cresols are also strong dermal irritants. No information is available on the chronic effects of mixed cresols in humans, but animal studies have reported effects on the blood, liver, kidney, and central nervous system, and reduced body weight from oral and inhalation exposure to mixed cresols. No information is available on the reproductive or developmental effects of mixed cresols in humans. Animal studies with oral exposure have reported developmental effects, but only at doses toxic to the mother, and no reproductive effects. Only anecdotal information is available on the carcinogenic effects of mixed cresols in humans. Several animal studies suggest that individual cresol compounds (o-cresol, m-cresol, and p-cresol) may act as tumor promoters. We have classified o-cresol, m-cresol, and p-cresol as Group C, possible human carcinogens.

Acute exposure to methylene chloride by inhalation affects the nervous system, causing decreased visual, auditory, and motor functions. These effects are reversible once exposure ceases. The effects of chronic exposure to methylene chloride suggest that the central nervous system is a potential target in both humans and animals. Limited animal studies have reported developmental effects. Human data are inconclusive regarding methylene chloride and cancer. Animal studies have shown increases in liver and lung cancer and benign mammary gland tumors following the inhalation of methylene chloride. We have classified methylene chloride as a Group B2, probable human carcinogen.

Acute inhalation exposure to MEK in humans results in irritation to the eyes, nose, and throat. Limited information is available on the chronic effects of MEK in humans. Chronic inhalation studies in animals have reported slight neurological, liver, kidney, and respiratory effects. No information is available on the developmental, reproductive, or carcinogenic effects of MEK in humans. Developmental effects, including decreased fetal weight and fetal malformations, have been reported in mice and rats exposed to MEK via inhalation and ingestion. We have classified MEK in Group D, not classifiable as to human carcinogenicity.

Acute inhalation of toluene by humans may cause effects to the central nervous system, such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. People who abuse toluene-based products by deliberately inhaling their vapors have shown adverse nervous system effects. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children of pregnant women exposed by inhalation to toluene or to mixed solvents have reported nervous system problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone.

Acute inhalation exposure of workers to vinyl acetate has resulted in eye and upper respiratory tract irritation. Chronic occupational exposure results in upper respiratory tract irritation, cough, and/or hoarseness. Nasal epithelial lesions and irritation and inflammation of the respiratory tract were observed in mice and rats chronically exposed by inhalation. No information is available on the reproductive, developmental, or carcinogenic effects of vinyl acetate in humans. Some limited animal data suggest reduced body weight, fetal growth retardation, and minor skeletal fetal defects at high exposure levels. An increased incidence of nasal cavity tumors has been observed in rats exposed by inhalation. We have not classified vinyl acetate for carcinogenicity.

Acute inhalation of mixed xylenes (a mixture of three closely related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation of xylenes in humans may result in nervous system effects such as headache, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys.

Acute inhalation exposure to gaseous hydrogen fluoride can cause respiratory damage in humans, including severe irritation and pulmonary edema. Chronic exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride through drinking water may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in skeletal fluorosis. The only developmental effect observed from fluoride exposure in humans is dental fluorosis which can occur in a child's teeth when a mother receives high levels of fluoride during pregnancy. One study reported menstrual irregularities in women occupationally exposed to fluoride. We have not classified hydrogen fluoride for carcinogenicity.

Acute inhalation exposure of humans to high levels of hexane causes mild central nervous system effects, including dizziness, giddiness, slight nausea, and headache. Chronic exposure to hexane in air causes numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. One study reported testicular damage in rats exposed to hexane through inhalation. No information is available on the carcinogenic effects of hexane in humans or animals. We have classified hexane in Group D, not classifiable as to human carcinogenicity.

Acute exposure to high concentrations of methyl chloride in humans has caused severe neurological effects including convulsions, coma, and death. Methyl chloride has also caused effects on heart rate, blood pressure, liver, and kidneys in humans. Chronic animal studies have shown liver, kidney, spleen, and central nervous system effects. No studies are available concerning developmental or reproductive effects of methyl chloride in humans. Inhalation studies have demonstrated that methyl chloride

causes reproductive effects in male rats, with effects including testicular lesions and decreased sperm production. Human cancer data are limited. Animal studies have noted kidney tumors in male mice. We have classified methyl chloride as a Group C, possible human carcinogen.

II. Summary of the Proposed NESHAP

A. What Source Categories and Subcategories Are Affected by These Proposed NESHAP?

As noted in section I.C of this preamble, we are creating two new source categories from the combination of several existing source categories. These two source categories, which are affected by today's proposed NESHAP, are called the ''Miscellaneous Organic Chemical Manufacturing'' source category and the ''Miscellaneous Coating Manufacturing'' source category. There are no subcategories.

B. What Are the Primary Sources of Emissions and What Are the Emissions?

The sources of emissions at both source categories are process vents, storage tanks, equipment leaks, transfer operations, and wastewater systems. Total baseline HAP emissions (*i.e.,* the current level of control) for the Miscellaneous Organic Chemical Manufacturing source category are estimated to be on the order of 44,700 Mg/yr (49,300 tons/yr). Emissions from equipment leaks account for the largest fraction of emissions, or approximately 46 percent of the total. Emissions from process vents and wastewater systems account for approximately 25 percent and 28 percent of the total, respectively. Emissions from storage tanks and transfer operations account for less than 1 percent of the total.

Total baseline HAP emissions for the Miscellaneous Coating Manufacturing source category are estimated to be 7,780 Mg/yr (8,580 tons/yr). Emissions from mixing vessels and equipment leaks make up nearly 86 percent and 13 percent of the total, respectively; less than 1 percent of the emissions are from wastewater, transfer operations, and storage tanks.

C. What Is the Affected Source?

The affected source for the Miscellaneous Organic Chemical Manufacturing source category is the facilitywide collection of miscellaneous organic chemical manufacturing process units (MCPU), wastewater treatment and conveyance systems, transfer operations and associated ancillary equipment such as heat exchange systems. The MCPU includes equipment necessary to operate a process, equipment components, and associated storage tanks.

The affected source for the Miscellaneous Coating Manufacturing source category is the miscellaneous coating manufacturing operations at the facility. These operations include storage tanks, process vessels, equipment components, wastewater treatment and conveyance systems, transfer operations, and ancillary sources such as heat exchange systems.

D. What Are the Emission Limitations, Operating Limitations and Other Standards?

The proposed emission limitations and work practice standards are in Tables 1 through 8 of the proposed subpart FFFF and Tables 1 through 7 of the proposed subpart HHHHH and are summarized below.

1. Miscellaneous Organic Chemical Manufacturing Source Category

We are proposing separate standards for batch and continuous process vents. For batch process vents, the proposed standards would require you to reduce uncontrolled HAP emissions from the sum of all batch process vents within the process by 98 percent if uncontrolled emissions exceed 4,540 kilograms per year (kg/yr) (10,000 pounds per year (lb/yr)). No control of vents would be required for processes that are limited to uncontrolled emissions of 4,540 kg/yr (10,000 lb/yr), as calculated on a rolling 365-day basis. A second control option that we are proposing today for batch vents is to reduce the sum of all batch process vents within the process by 95 percent using recovery devices. You may also comply with the alternative standard, which requires you to achieve specified outlet concentrations for total organic compounds (TOC) and total hydrogen halides and halogens on a continuous basis. Both emission limits are 20 parts per million by volume (ppmv) for combustion devices, and 50 ppmv for noncombustion devices. We defined the term ''process'' to include all equipment which collectively functions to produce a material or family of materials that are covered by the source category.

For continuous process vents, the proposed standards would require control of vents determined to have a total resource effectiveness (TRE) index equal to or less than 2.6. The proposed standards would require you to reduce HAP emissions by at least 98 percent by weight if the TRE of the outlet gaseous stream after the last recovery device is above 2.6, or to reduce the outlet TOC concentration to 20 ppmv or less. For continuous process vents, we reference the process vent standards contained in 40 CFR part 63, subpart SS.

For both continuous and batch process vents, we are proposing to allow you to comply by combusting streams in hazardous waste incinerators that comply with the requirements of the Resource Conservation and Recovery Act (RCRA) or in boilers, flares, or process heaters that meet certain design and operating requirements. Additionally, you must also achieve less than 20 ppmv halogen or hydrogen halide concentration if you demonstrate compliance with the 20 ppmv TOC alternative standard or the 20 ppmv TOC concentration limit standards.

The proposed new source standards for batch and continuous process vents follow the same formats as described above. However, the applicability triggers are more stringent. All batch vents within a process for which the uncontrolled emissions from batch vents exceed 1,360 kg/yr (3,000 lb/yr) must be reduced by either 98 percent using a control device or 95 percent using a recovery device. All continuous process vents with a TRE of less than or equal to 5.0 must be controlled by 98 percent. The same options for control using hazardous waste incinerators, other combustion devices, and the alternative and concentration standards are also available for new sources.

We are proposing storage tank standards that would require existing sources to control emissions from storage tanks having capacities greater than or equal to 38 cubic meters (m^3) (10,000 gallons (gal)) and storing material with a HAP partial pressure of greater than 6.9 kilopascals (kPa) (1.0 pound per square inch absolute (psia)). For new sources, the proposed standards would require control of storage tanks having capacities greater than or equal to 38 m^3 (10,000 gal) and storing material with a HAP partial pressure of greater than 0.7 kPa (0.1 psia). For both existing and new sources, the required control would be to use a floating roof or to reduce the organic HAP emissions by 95 percent by weight or more.

The proposed standards for wastewater, transfer operations, maintenance wastewater, and heat exchange systems are identical to those required under the HON. At existing sources, control would be required for wastewater streams with HAP listed on Table 9 of 40 CFR part 63, subpart G (Table 9 HAP), if the concentration exceeds 1,000 parts per million by weight (ppmw) and the flow exceeds 10 liters per minute (lpm), or if the concentration of Table 9 HAP exceeds

10,000 ppmw at any flowrate. The proposed control requirements are to convey the wastewater streams through controlled sewers using vapor suppression techniques to treatment where the Table 9 HAP are removed or destroyed, thereby reducing Table 9 HAP emissions. At new sources, the proposed conveyance and control requirements are identical to those for existing sources, but the applicability triggers on individual streams are more stringent. In addition to controlling streams that meet the thresholds for existing sources, control would also be required for streams containing HAP listed on Table 8 of 40 CFR part 63, subpart G (Table 8 HAP), if the concentration exceeds 10 ppmw and the wastewater stream flowrate is greater than 0.02 lpm.

For transfer operations, we are proposing to require the HON level of control for transfer racks that load greater than 0.65 million liters per year (l/yr) (0.17 million gallons per year (gal/yr)) of liquid products that contain organic HAP with a partial pressure of 10.3 kPa (1.5 psia). Each transfer rack that meets these thresholds would be required to be controlled to reduce emissions of total organic HAP by 98 percent by weight or more, or to have displaced vapors returned to the process or originating container. For sources such as maintenance wastewater and heat exchanger systems, we are proposing to require a plan for minimizing emissions and a monthly leak detection program, respectively, as was done in the HON.

For equipment leaks, we are proposing to require implementation of the leak detection and repair (LDAR) program that is contained in 40 CFR part 63, subpart UU. This LDAR program is also identical to the program in the proposed Consolidated Air Rule (63 FR 57748, October 28, 1998). This LDAR program achieves the same reductions as the HON LDAR program, but contains options for more directed monitoring of components that have been identified to leak, thereby reducing the monitoring burden relative to that of the HON LDAR program.

The proposed subpart FFFF also includes a pollution-prevention alternative for existing sources that meets the control level of the MACT floor and that you may implement in lieu of the emission limitations and work practice standards described above. The pollution-prevention alternative provides a way for facilities to comply with MACT by reducing overall consumption of HAP in their processes; therefore, it is not applicable for HAP that are generated in the process. Specifically, you must demonstrate that the production-indexed consumption of HAP has decreased by at least 65 percent from a 3-year average baseline set no earlier than the 1994 through 1996 calendar years. The production-indexed consumption factor is expressed as the mass of HAP consumed divided by the mass of product produced. The numerator in the factor is the total consumption of the HAP, which describes all the different areas where it can be consumed, either through losses to the environment, consumption in the process as a reactant, or otherwise destroyed.

Cleaning is considered part of the miscellaneous organic chemical manufacturing process. Therefore, cleaning fluids are considered to be process fluids, and you would be subject to the same process vent, storage tank, equipment leak, and wastewater provisions when using cleaning fluids as when using other process fluids.

2. Miscellaneous Coating Manufacturing Source Category

The proposed standards for coating manufacturing cover vents from process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and ancillary heat exchange operations.

The proposed standards require both stationary and portable process vessels with capacities greater than or equal to 0.94 m^3 (250 gal) to be equipped with covers. Additionally, organic HAP emissions from stationary vessels at existing sources are required to be reduced by at least 75 percent by weight from an uncontrolled baseline, in addition to the requirement for covers. Stationary and portable vessels at new sources would be required to be equipped with covers and to reduce organic HAP emissions by at least 95 percent by weight. Alternatively, for both new and existing sources, you may use a condenser operated at specified temperature limits.

The proposed standards for affected storage tanks at both existing and new sources would require either organic HAP emissions reductions of 90 percent by weight or more, or the use of floating roofs or vapor balancing. For existing sources, affected storage tanks are those that have capacities greater than or equal to 75 m^3 (20,000 gal) and store material with a vapor pressure of 13.1 kPa (1.9 psia). For new sources, affected storage tanks are those with capacities equal to or greater than 75 m^3 (20,000 gal) but less than 94 m^3 (25,000 gal) and storing material that has a vapor pressure of 10.3 kPa (1.5 psia) or greater, and tanks with capacities greater than 94 m^3 (25,000 gal) storing material that has a vapor pressure of 0.7 kPa (0.1 psia).

For wastewater at existing sources, the proposed NESHAP would require that wastewater containing a total organic Table 9 HAP (40 CFR part 63, subpart G) concentration of 4,000 ppmw or greater be conveyed in controlled sewers and treated to remove or destroy organic HAP. The compliance procedures cross referenced from part 63 allow for offsite control of wastewaters provided the offsite source submit to EPA written certification that the transferee will manage and treat any affected wastewater or residual in accordance with the requirements of the proposed NESHAP. For new sources, the applicability triggers for control would be more stringent, affecting all streams with Table 9 HAP concentrations greater than or equal to 2,000 ppmw.

We also note that the definition of wastewater for the Miscellaneous Coating Manufacturing source category (proposed subpart HHHHH) differs from the definition of wastewater for proposed subpart FFFF. This definition includes HAP-containing water, raw material, intermediate, product, by-product, co-product, or waste material that exits equipment in a process. This definition is being proposed to capture waste solvent that may be generated in a process and sent to a recovery operation. In these cases, the material exiting the process equipment would be considered an affected wastewater stream if it met the HAP concentration limits and therefore would be required to be managed as such. We think that the wastewater standards are appropriate for these streams considering that their characteristics reflect wastes sent offsite for destruction.

Proposed standards for transfer operations would require 75 percent control of HAP emissions from product loading to tank trucks and railcars if the amount of material transferred contains at least 11.4 million l/yr (3.0 million gal/yr) of HAP, and the material has a HAP partial pressure greater than or equal to 10.3 kPa (1.5 psia). Acceptable control strategies also include routing displaced vapors back to the process, or the use of condensers operated below specified temperature limits.

As with the standards for miscellaneous organic chemical manufacturing, we are proposing to require the LDAR program contained in 40 CFR part 63, subpart UU for control of equipment leaks. For maintenance wastewater and heat exchanger systems, we are proposing to require a plan for

minimizing emissions and a monthly leak detection program, respectively, as was done in the HON.

Cleaning operations are considered part of the miscellaneous coating manufacturing operations (like mixing). Therefore, cleaning fluids are considered to be process fluids, and the requirements for process vessels, storage tanks, equipment leaks, and wastewater systems that apply to other process operations also apply to cleaning operations.

E. What Are the Testing and Initial Compliance Requirements?

1. Process Vents

The proposed subpart FFFF would require calculation of uncontrolled emissions as a first step in demonstrating compliance with the 98 percent or 95 percent reduction requirement for batch process vents. If you choose to control vents using the alternative standard or using specified combustion devices, this initial calculation of uncontrolled emissions is not required. For continuous process vents, the proposed subpart FFFF would require calculation of the TRE index values using the procedures contained in the HON for continuous process vents.

For stationary process vessels in the Miscellaneous Coating Manufacturing source category, you have the option of achieving a specified condenser exit gas temperature (based on vapor pressure) in lieu of calculating uncontrolled emissions as the first step in demonstrating the 75 percent reduction for existing sources or 95 percent reduction for new and reconstructed sources.

To verify that the required reductions have been achieved, you must either test or use calculation methodologies, depending on the emission stream characteristics, control device, and the type of process vent. Initial compliance demonstration provisions for batch vents in Miscellaneous Organic Chemical Manufacturing sources and stationary process vessels at Miscellaneous Coating Manufacturing sources reference the Pharmaceuticals Production NESHAP (40 CFR part 63, subpart GGG). Therefore, process vents control devices handling greater than 9.1 Mg/yr (10 tons/yr) of HAP must be tested, while engineering assessments are allowed for control devices with lower loads and for condensers. Performance test provisions in both source categories consider worst-case emissions for devices controlling process vents.

For each continuous process vent with a TRE less than or equal to 2.6, compliance with the percent reduction emission limitation must be verified through measurement (testing).

2. Storage Tanks, Transfer Operations, and Wastewater

For demonstrating compliance with various requirements, the proposed NESHAP allow you to either conduct performance tests or document compliance using engineering calculations. The initial compliance demonstration procedures reference 40 CFR part 63, subpart SS, for storage tanks complying using control devices and transfer operations, subpart WW for storage tanks complying using floating roofs, and subpart G for wastewater sources.

3. Equipment Leaks

To document compliance with the LDAR provisions, the proposed NESHAP require you to demonstrate that an LDAR program meeting the requirements of the Generic MACT in subpart UU of 40 CFR part 63 is in use.

F. What Are Continuous Compliance Provisions?

The proposed NESHAP require monitoring to determine whether you are in compliance with emission limitations on an ongoing basis. This monitoring is done either by continuously measuring HAP emissions reductions or by continuously measuring a site-specific operational parameter, the value of which you would establish during the initial compliance demonstration. The operating parameter is defined as the minimum or maximum value established for a control device or process parameter that, if achieved on a daily basis by itself or in combination with one or more other operating parameter values, determines whether you are complying with the applicable emission limits. These parameters are required to be monitored at 15-minute intervals throughout the operation of the control device.

Continuous, or 15-minute monitoring, is not required for all sources. For emission sources not equipped with control devices or falling below applicability trigger levels, such as the 4,540 kg/yr (10,000 lb/yr) emission limit for the sum of batch vents within a process below which no control is required, you must monitor the number of batches to demonstrate that you continuously fall below the yearly emission limit. For control devices that do not control more than 1 ton per year of HAP emissions, only a daily verification of the operating parameter is required, as is provided in the Pharmaceuticals Production NESHAP. To demonstrate compliance with work practice standards, such as the requirement to maintain floating roofs, inspection of equipment serves as the monitoring demonstration and is required only on a periodic (yearly) basis.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you are subject to the proposed NESHAP, you would be required to fulfill all reporting requirements outlined in the General Provisions to part 63 (40 CFR part 63, subpart A). The sections of subpart A that apply to the proposed NESHAP are designated in Table 21 of the proposed subpart FFFF and Table 19 of the proposed subpart HHHHH. In addition, we have included recordkeeping and reporting requirements that are specific to these proposed NESHAP. For example, you are required to submit a precompliance report if you choose to comply using an alternative monitoring approach, use an engineering assessment to demonstrate compliance, or comply using a control device handling less than 1 ton per year of HAP emissions. Other notifications that are required by other MACT standards, such as the Initial Notification and the Notification of Compliance Status (NOCS), are also required by these proposed NESHAP and are identified in § 63.2540 of the proposed subpart FFFF and § 63.8070 of the proposed subpart HHHHH.

The Initial Notification is required within 120 days of the effective date of the NESHAP. The report, which is very brief, serves to alert appropriate agencies (State agencies and EPA Regional Offices) of the existence of your affected source and puts them on notice for future compliance actions. The NOCS, which is due on the compliance date of the NESHAP, is a comprehensive report that describes the affected source and the strategy being used to comply. The NOCS is also an important aspect of the title V permitting strategy for sources subject to subpart FFFF, which is discussed in section II.H of this preamble.

H. How Will the Proposed Subpart FFFF Be Incorporated Into Title V Permits?

Title V requires operating permits to assure compliance with all applicable requirements at a source, including the proposed subpart FFFF where it applies. Most existing sources that will become subject to the proposed subpart FFFF upon promulgation will already be

operating under title V operating permits (*e.g.,* because they are major sources of HAP or because they are subject to some other section 112 standard).

Under section 502(b)(9) of the CAA, if a Federal standard like the proposed subpart FFFF is promulgated when 3 or more years remain on a major source's title V permit term, the permit will need to be reopened in order to assure compliance with the proposed subpart FFFF. Such a reopening must be completed not later than 18 months after promulgation of the proposed subpart FFFF (40 CFR 70.7(f)(1)(i)).

If fewer than 3 years remain on a title V permit term, a permitting authority's program may reflect the option not to require revisions to the permit to incorporate the NESHAP. Subpart FFFF would be added to the source's title V permit at the next permit renewal, but of course in the meantime, the source must fully comply with the proposed subpart FFFF outside the title V permit. The CAA permits State programs to require revisions to the permit to incorporate the NESHAP when fewer than 3 years remain on a major source's permit term, however, so any sources with fewer than 3 years remaining on their permits upon the promulgation of the proposed subpart FFFF, should consult their State permitting program regulations to determine whether revision to their permits is necessary to incorporate the NESHAP.

The Miscellaneous Organic Chemical Manufacturing source category is similar to the Pharmaceuticals Production source category in that both use nondedicated, multipurpose equipment that may be configured in numerous ways to accommodate different batch processes. In addition, both the proposed subpart FFFF and the Pharmaceuticals Production NESHAP (40 CFR part 63, subpart GGG) have process-based emission limitations for batch processes. Therefore, when a permitting authority incorporates the proposed subpart FFFF into a title V permit, the miscellaneous organic chemical manufacturing sources, like pharmaceuticals production sources, may wish to consider requesting that the permit set forth terms and conditions for reasonably anticipated operating scenarios. The part 70 regulations provide for this opportunity to allow sources to account for operating scenarios that the source owner or operator reasonably anticipates over the course of the permit term, without need for permit revisions (40 CFR 70.6(a)(9)). The permit would require the source, contemporaneously with making a change from one operating scenario to another, to record in an operating log at the facility a record of the current scenario under which the source is operating. By minimizing the need to reopen the permit, the part 70 alternative operating scenarios may be a particularly useful permit strategy.

III. Rationale for Selecting Proposed Emission Limitations and Work Practice Standards

A. How Did We Select the Source Categories?

As noted in section I.C of this preamble, we are creating two new source categories from the combination of existing source categories. These two source categories are Miscellaneous Organic Chemicals Manufacturing and Miscellaneous Coating Manufacturing.

The Miscellaneous Organic Chemicals Manufacturing source category will cover emission sources from 22 previously listed source categories, as well as some emission sources that are not specifically covered by other MACT standards. For example, the HON does not regulate emissions from batch process vents. Therefore, the Miscellaneous Organic Chemicals Manufacturing source category will cover these emission sources. In specifying SIC codes, we also include SIC code 283 to include the production of any materials not already covered by the Pharmaceuticals Production NESHAP.

In the proposed subpart FFFF, we specifically exempt by-product ammonium sulfate manufacturing facilities at caprolactum plants and their respective operations provided that the ammonium sulfate slurry entering the ammonium sulfate manufacturing operation is documented to contain 50 ppmw or less HAP and 10 ppmw or less benzene. We are providing this exemption because these streams are considered treated wastewater, and the ammonium sulfate production is an inorganic chemical manufacturing process.

We also reviewed information submitted by the explosives manufacturing industry that requested us to develop a separate subcategory for explosives manufacturers. The industry group indicated that the proposed control requirements for batch process vents could place severe and unsafe restrictions on explosives and propellant manufacturing sources because existing control technologies, especially those technologies that can achieve 98 percent control, are unsafe. Because the possibility exists that vents from these processes may contain residual explosive materials, the industry contends that thermal destruction technology cannot safely treat these emission streams. The industry has indicated that process condensers are used to recover HAP solvents in production processes and therefore condensation may be a viable control technology for many sources. We recognize that incineration is not a viable control option. Therefore, we have decided to solicit comments on whether process vents generated in the production of explosives, commonly referred to as ''energetics,'' should be treated as a separate class of emission streams subject to a lesser degree of control corresponding to that achievable using condensers (or other controls). We are also soliciting comments on whether the condenser outlet gas temperature defaults that are being proposed for coatings manufacturing would be appropriate for this industry, and we are soliciting comments on what the definition of ''energetics'' should be. Note that this discussion does not extend to other emission sources in the explosives industry, such as storage tanks, wastewater, transfer operations, and equipment leaks. These emission points will be regulated in the same manner as for other processes in the Miscellaneous Organic Chemicals Manufacturing source category.

The Miscellaneous Coating Manufacturing source category is much narrower in applicability than the Miscellaneous Organic Chemicals Manufacturing source category. Process emission sources are vessels used to mix and transfer materials used to make coatings. Coatings include paints, inks, adhesives, and sealants and are generally described under SIC codes 285 and 289, although the NESHAP also apply to the manufacture of any coatings that do not fall under these SIC codes. However, other operations within the SIC Code 285 (SIC 2851 (NAICS 32551)—paints, varnishes, lacquers, enamels, and allied products) and SIC Code 289 (SIC 2891 (NAICS 32552)—adhesives and sealants) that involve chemical reactions are covered by the Miscellaneous Organic Chemical Manufacturing source category; for example, the manufacture of a latex resin in a chemical reaction prior to its use as a raw material to manufacture a paint would be covered by the Miscellaneous Organic Chemical Manufacturing standards.

B. How Did We Select the Affected Source?

Most industrial plants consist of numerous pieces or groups of equipment that emit HAP and that may be viewed as emission ''sources.''

Therefore, we use the term ''affected source'' to designate equipment within a particular kind of plant chosen as the ''source'' covered by the proposed NESHAP. For today's proposed Miscellaneous Organic Chemical Manufacturing NESHAP, we are defining the affected source as the collection of MCPU and associated equipment, such as heat exchange systems, wastewater conveyance and treatment systems, and transfer operations within a plant site that is a major source. The MCPU definition within the affected source definition also includes specific emission sources that are exempt from other MACT standards, such as batch vents from the HON chemical manufacturing process units.

We are proposing to define the affected source for the Miscellaneous Coating Manufacturing source category as the miscellaneous coating manufacturing operations, or the collection of equipment necessary to formulate coatings, including inks, paints, sealants, and adhesives at a plant site that is a major source. The affected source includes equipment such as heat exchange systems, wastewater conveyance and treatment systems, and transfer operations.

Within each affected source, we identified the following five types of HAP emission points: process vents, storage tanks, transfer operations, equipment leaks, and wastewater.

C. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

According to the CAA, the MACT floor for existing sources is defined as ''the average emission limitation achieved by the best performing 12 percent of sources (for which the Administrator has emissions information).'' We interpreted the term ''average'' in 59 FR 29196 as a measure of the ''central tendency of a data set.'' The central tendency may be represented by the arithmetic mean, median, or some other measure that is reasonable. The MACT floors for the proposed NESHAP are based on the central tendency for each emission source type, using available data. In some cases, we use the arithmetic mean to identify the floor control level and in other cases, we use the median. Generally, we prefer to use the arithmetic mean if sufficient data points exist and if the resulting performance level corresponds to an available control technology. However, if data are insufficient to determine an arithmetic mean or if the result does not yield a performance level that corresponds to an available control technology, we use the median.

1. How Did We Determine the MACT Floors for the Miscellaneous Organic Chemicals Manufacturing Source Category?

The MACT floors for the Miscellaneous Organic Chemicals Manufacturing source category were developed using data that were collected from facilities during 1997 and from existing available data located in EPA and State databases. Clean Air Act section 114 information collection requests (ICR) were sent to 194 facilities in the spring of 1997. The facilities which received the ICR were identified from EPA's 1993 toxic release inventory (TRI) database which included information on facilities in SIC codes 282, 284, 286, 287, 289, or 386. Information on continuous processes came from emissions and permit databases from the following States: Texas, Louisiana, North Carolina, Illinois, Missouri, California, and New Jersey. Components of the MACT floor were calculated separately for process vents, storage tanks, wastewater, transfer operations, and equipment leaks consistent with the ''plank'' methodology developed in the HON (57 FR 62627, December 31, 1992) and are discussed below.

a. *Process Vents.* For process vents, we reviewed information on both batch process vents and continuous process vents. To be consistent with formats in previous MACT standards, we grouped data for batch vents according to all vents within a process. The floor for batch vents was determined for the process, similar to the Pharmaceuticals Production NESHAP. For continuous process vents, we evaluated data on a single vent-by-vent basis, as was done in the HON. We chose the Pharmaceuticals Production NESHAP as the model for the format of the batch vent standard in the proposed subpart FFFF because it works well for multipurpose equipment, fits well into the definition of operating scenario, and works best for pollution prevention. For continuous vents, we modeled the standard formats on the HON because the continuous vents in this source category are not expected to differ significantly in characteristics from those covered by the HON, and other regulations such as the new source performance standards (NSPS) in 40 CFR part 60, subparts NNN, III, RRR, and DDD, which all require control based on characterization using a TRE index on individual process vents.

To evaluate the MACT floor for batch process vents, we started with the database generated from responses to the 1997 ICR. We summed batch vents to calculate the mass of emissions, on an uncontrolled basis, for each process as reported in the ICR responses. We then sorted the processes based on control efficiency and uncontrolled HAP emissions, ranking all processes controlled in order of increasing uncontrolled emissions. The practical limit for control efficiency that would be achievable by devices in this industry is 98 percent. Since greater than 12 percent of processes were controlled to 98 percent, processes with the lowest uncontrolled emissions are best performing. The resulting database contained 731 processes at 144 facilities. The number of processes making up the best 12 percent was 88. We determined that the median performance level represented the central tendency of the top processes since HAP emission values for the top performing facilities represented a skewed distribution over a large range. The median process had 4,480 kg/yr (9,860 lb/yr) of uncontrolled HAP emissions. Based on this process, the MACT floor was set at 98 percent for processes with uncontrolled emissions of 4,540 kg/yr (10,000 lb/yr).

For the new source MACT floor for batch process vents, we identified the batch process representing the best controlled similar source to have uncontrolled HAP emissions of approximately 1,360 kg/yr (3,000 lb/yr). It is controlled with a thermal incinerator. Therefore, we selected the new source MACT floor to be 98 percent control for all processes with uncontrolled HAP emissions greater than or equal to 1,360 kg/yr (3,000 lb/yr).

The MACT floor for continuous process vents was determined in a manner similar to what was done in the development of the HON. We used TRE values for individual process vents as a measure of the level of control. The TRE calculation uses inputs such as stream flow rate and HAP concentration to produce an index value. Streams have high TRE values primarily because of low HAP concentration. As a starting point, we used existing data that had been collected from State agency permit files. This database includes 240 vent streams from 61 processes for which TRE values could be calculated. We calculated TRE values using information on the stream characteristics including flowrate, volatile organic compounds (VOC) content, and HAP content. We then identified all streams that were controlled to 98 percent or better. From the TRE values and the control efficiencies, we identified a threshold TRE value for each facility below which

all streams were controlled. Facilities with the highest TRE threshold values are considered the best performing facilities. There are 44 facilities in the floor analysis, but only 17 with thresholds (the remainder of the facilities did not control their stream with the lowest TRE). Since TRE values for the top performing facilities represent an even distribution over a limited value range, it was determined that the average TRE value best represented the central tendency. The average TRE threshold for the top 12 percent of the facilities is 2.6. Therefore, the MACT floor at existing sources is 98 percent control for all continuous process vents with a TRE less than or equal to 2.6. The TRE threshold for each facility was also used to determine the best performing facility. That facility is controlling all continuous process vents with a TRE of 5.0 or less at a level of 98 percent. Therefore, this is the MACT floor for new sources.

b. *Storage Tanks.* In developing the MACT floor for storage tanks, we again used the CAA section 114 information database. Approximately 16 percent of storage tanks are reported to be equipped with a floating roof or a control device achieving a HAP reduction efficiency of 95 percent or more. As recognized in several NESHAP and NSPS, floating roofs are equivalent to 95 percent control. To determine the appropriate vapor pressure threshold for the MACT floor level of performance, we identified a partial pressure threshold at each facility above which all tanks with a capacity greater than or equal to 38 m^3 (10,000 gal) at the facility were controlled to the MACT floor level. The top 12 percent of the 128 facilities in the tanks database correspond to the top 14 facilities. The average threshold value for the top 12 percent of facilities is a HAP partial pressure of 1 psia (rounded up from 0.88 psia). The average, rather than the median, was chosen because the average value best represented the different HAP stored, and thus represented the central tendency of the data set.

The new source MACT floor for storage tanks was determined to be floating roof technology or 95 percent control since this level of control represents the best level of control in the source category. As with the existing source MACT floor, applicability cutoffs for the new source MACT floor are established based on the smallest tanks storing material with the lowest partial pressures since the emission potential of tanks generally decreases with capacity and vapor pressure of stored material. Therefore, the facility controlling the smallest tanks with the lowest vapor pressure materials in the source category represents the best controlled source. The MACT floor for new sources consists of floating roof technology or 95 percent control of all tanks with a capacity greater than or equal to 38 m^3 that store material with a HAP partial pressure of 0.1 psia, based on the facility that applied controls to all tanks storing materials with a vapor pressure at or above 0.087 psia (rounded to 0.1 psia).

c. *Wastewater.* For wastewater streams, we also set the MACT floor using data collected from the industry. After excluding all but Table 9 HAP, the database contains 363 streams at 60 facilities that have Table 9 HAP concentrations of at least 1,000 ppmw. A total of 184 of these streams at 44 facilities meet the HON cutoffs (i.e., streams of any flowrate that contain at least 10,000 ppmw of Table 9 HAP compounds, and streams with a flowrate of at least 10 lpm that contain at least 1,000 ppmw of Table 9 HAP compounds). Because more than 12 percent of the streams that meet the cutoff are controlled to the level of the HON, we therefore concluded that the MACT floor consists of the HON level of control and the HON cutoffs.

In establishing the new source MACT floor for wastewater, we concluded that the HON new source MACT floor also applies to the Miscellaneous Organic Chemical Manufacturing source category. It is not possible to identify at least one stream in the database that meets HON new source applicability levels of 0.02 lpm and 10 ppmw Table 8 HAP because we did not ask for data on wastewater streams with less than 1,000 ppmw Table 9 HAP. However, based on our knowledge of the miscellaneous organic chemical manufacturing industry, we have concluded that the wastewater conveyance and treatment systems used to convey and control HON-affected wastewaters also convey and control affected wastewaters in this source category; therefore, a floor exists based on the colocation of HON and miscellaneous organic chemical manufacturing affected sources. The new source floor should be no less stringent than the MACT level of control for new HON sources. This is also the most stringent requirement contained in any other NESHAP, including the Benzene Waste Operations NESHAP (40 CFR part 61, subpart FF), and we would expect that a similar colocation argument could be made regarding overlap of these requirements for wastewater conveyance and control with affected miscellaneous organic chemical manufacturing sources. The colocation rationale for both wastewater new source MACT floor and the MACT floors for existing and new source transfer operations is further discussed in the next section.

d. *Transfer Operations.* Standards for loading operations regulate the transfer of materials containing HAP. Although the products of miscellaneous organic chemical manufacturing sources are not expected to contain HAP, generally, it is possible that products will be transferred in solutions of HAP. Therefore, there is a need to establish requirements for loading operations for the source category. In our data gathering effort, we did not collect information on transfer operations. Therefore, we established the floors and regulatory alternatives based on existing available data.

We decided to base the transfer requirements for the proposed NESHAP on the transfer requirements contained in the HON. The rationale for this decision is based on the fact that the Miscellaneous Organic Chemicals Manufacturing source category is closely related to the HON source category in equipment, emission sources, and operations; and we believe a floor exists from colocation of miscellaneous organic chemical manufacturing sources at HON facilities. Many facilities with HON applicability also contain processes which will be regulated by the Miscellaneous Organic Chemical Manufacturing NESHAP. Additionally, there are circumstances where applicability to these proposed standards will overlap with the HON; for example, the Miscellaneous Organic Chemical Manufacturing NESHAP will cover vents from batch unit operations that are part of HON chemical manufacturing process units (CMPU), therefore products from HON and miscellaneous organic chemical manufacturing sources may be loaded at the same rack.

Based on a review of facilities in Texas and Louisiana, we found that approximately 60 percent of facilities containing processes subject to the Miscellaneous Organic Chemical Manufacturing NESHAP also contain processes subject to the HON. Assuming that these States are representative and that the colocation assumption is valid, then the MACT floor for transfer operations is based on the requirements of the HON, which is 98 percent control for loading racks with a throughput greater than or equal to 0.65 million liters per year (0.17 million gallons per year) at a rack-weighted HAP partial pressure greater than or equal to 10.3 kPa (1.5 psia). In selecting this floor, we also stress that the selection of the same

requirements will streamline the compliance process for those colocated MON processes since only one set of requirements will apply for transfer operations.

e. *Equipment Leaks.* The MACT floor level of performance for equipment leaks is an LDAR program for equipment components. We estimate that the HON LDAR program will reduce HAP emissions by 63 to 75 percent for continuous chemical processes and 70 to 73 percent for batch chemical processes. We determined that several LDAR programs implemented by Texas and Louisiana are roughly equivalent to the HON LDAR program when applied to continuous chemical processes.

Approximately 33 percent of facilities with continuous and batch chemical processes were reported to implement some type of structured LDAR program for equipment components. The top performing 12 percent of facilities were determined by rank ordering all facilities by the LDAR program and overall effectiveness in descending order. The top 12 percent of the 229 facilities in the database correspond to 28 facilities. We found that 30 facilities implement an LDAR program that reduces emissions equivalent to the HON program. Therefore, we set the floor at the HON LDAR program.

Because we wanted to maintain consistency with other Federal rules, we are referencing the requirements of 40 CFR part 63, subpart UU. Implementing subpart UU achieves the same level of control as implementing the HON subpart H program. However, the subpart UU program significantly reduces the burden associated with monitoring valves and connectors without increasing emissions.

2. How Did We Determine the MACT Floors for the Miscellaneous Coating Manufacturing Source Category?

a. *Process Vessels.* In developing the MACT floor for this source category, we made a distinction between portable and stationary process tanks. This distinction was made because of the feasibility of controlling each type of vessel and observed industry practices with respect to each type of vessel. Stationary tanks tend to be larger in capacity and are more easily adaptable to add-on control devices. In contrast, portable tanks do not lend themselves to add-on control as easily.

The MACT floor level of performance for portable process vessels is the emission reduction achieved by the use of a fixed or removable cover. Based on industry survey results, approximately 92 percent of portable vessels (2,783 vessels) are equipped with covers, but only 3 percent of portable vessels are reportedly equipped with any type of control device. Therefore, the MACT floor was determined to be covers only. For stationary vessels, we determined the MACT floor to be the emission reduction achieved by the use of a fixed or removable cover that vents to a control device. As with portable tanks, most (approximately 98 percent) of the stationary process vessels are equipped with a cover. Another 8 percent of these vessels were also reported to be controlled with an add-on device. The top 12 percent of 4,628 stationary vessels correspond to 555 tanks. Of these, 368 vessels were reported to be equipped with both a cover and an add-on control device. The average control efficiency of these control devices is 60 percent (rounded up from 57 percent). During the data analysis, we determined that the average performance level did represent the central tendency of the top facilities, as control device efficiencies represented a fairly even distribution. Therefore, we set the MACT floor for stationary vessels to be 60 percent control, as achieved by a cover and closed vent to a control device achieving 60 percent control.

b. *Storage Tanks.* According to the ICR survey data, only 18 of the 453 storage tanks in the database were equipped with control devices. Therefore, because we did not identify any means by which sources are currently reducing emissions that is sufficiently widespread to constitute a MACT floor, we are not establishing a MACT floor for storage tanks at existing sources in the Miscellaneous Coating Manufacturing source category.

For new sources, the MACT floor consists of 90 percent control for storage tanks with a capacity ≥94 m^3 (≥25,000 gal) that store a material with a HAP partial pressure ≥0.7 kPa (≥0.1 psia) and 90 percent control for tanks with a capacity <75 m^3 (<20,000 gal) and <94 m^3 (<25,000 gal) that store material with a HAP partial pressure ≥10.3 kPa (≥1.5 psia). Applicability cutoffs are established based on the smallest tanks storing material with the lowest partial pressures. This floor is based on the practices of one facility that has a 94 m^3 (25,000 gal) tank storing 100 percent xylene, which has a partial pressure of 0.76 kPa (0.11 psia), and a 20,000 gal tank storing 100 percent methyl ethyl ketone, which has a partial pressure of 10.3 kPa (1.5 psia) (assuming a temperature of 20°C for both tanks). These tanks are the best performing tanks because they are all controlled to the best level of control in the source category (i.e., 90 percent).

c. *Wastewater.* In selecting MACT for wastewater, we did not follow the same convention as previous analyses for other NESHAP that assumed that the total quantity of generated wastewater, in addition to HAP concentration, would determine treatment options. The use of both flowrate and concentration to identify streams for control is based on the assumption that the cost and effectiveness of controls depend on both the concentration of HAP in the wastewater and the quantity of wastewater generated. This is a reasonable assumption for facilities that treat wastes on site, such as facilities that steam strip wastewater onsite. However, for small quantity generators such as the coating manufacturing facilities, the need for treatment is driven by the characteristics of the wastewater, not the flow rate. If they cannot discharge to a publicly owned treatment works because of their wastewater characteristics, they typically drum their wastewater and send it offsite for treatment. As a result, the unit cost of treatment (i.e., dollars per megagram of HAP reduced) is directly related to the characteristics of the wastewater (e.g., the HAP concentration), not the flow rate.

Because the total quantity of wastewater generated is not significant in determining the unit cost of treatment, we propose to set the MACT floor for this industry segment based only on HAP concentration and not flowrate. Based on the data from the industry, the MACT floor for existing sources would be set based on a concentration of 4,000 ppmw, representing the median concentration of controlled streams from the industry, while the MACT floor for new sources would be set based on a concentration of 2,000 ppmw, which corresponds to the lowest HAP concentration that is controlled. These requirements are based on the practices of nine facilities that reported information regarding wastewater on ten streams. Five of the ten wastewater streams were reported as being controlled, and all were controlled by being drummed and incinerated because they were also RCRA wastes. Thus, the control level was considered to be equivalent to that required by the HON.

d. *Transfer Operations.* In the data gathering effort for this project, no data were requested regarding transfer operations. Therefore, we relied on other available information to set the MACT floors. In the absence of data specific for individual coating manufacturers, we reviewed several State rules to determine the minimum level of control that would apply to

transfer operations at facilities in those States. At a minimum, those rules require 90 percent control of operations where greater than 75 m^3/day (20,000 gal/day), which equates to 27.6 million 1/yr (7.3 million gal/yr), of VOC having vapor pressures of 10.3 kPa (1.5 psia) or more are transferred. These requirements are typically applied to bulk loading into transport vessels such as tank trucks and railcars. For other containers, such as totes and drums, those rules typically do not apply.

Transfer operations at coating manufacturing facilities result from the loading of transport vessels as well as other containers. However, because we are not aware of any existing rules that apply to the loading of these containers, we are not establishing a MACT floor for existing transfer operations at coating manufacturing facilities.

For new sources we conducted a telephone survey of facilities identified in the database to have high HAP throughputs based on the ICR responses for storage tanks. We were unable to identify any facilities that control emissions from bulk loading operations. Because we did not identify any means by which facilities currently are controlling emissions from such operations, we are not establishing a MACT floor for new sources in the Miscellaneous Coating Manufacturing source category.

e. *Equipment Leaks.* We determined that the MACT floor for equipment components is a monthly sensory LDAR program equivalent to the Bulk Gasoline Terminal NESHAP. We based this determination on survey data from the industry that showed that the top performing 12 percent, which consisted of the best 15 of 127 facilities in the database, reported monthly sensory LDAR programs that were considered equivalent to the Bulk Gasoline Terminal NESHAP. Fourteen of the 15 facilities used monthly sensory LDAR programs, while only one facility used a Method 21 monitoring-based LDAR program. We did not consider the one facility representative of the industry. Therefore, we also determined the new source MACT floor to be a monthly sensory program.

3. How Did We Consider Beyond-the-Floor Technology for the Source Categories?

The CAA states that MACT must be the maximum degree of reduction in emissions that is achievable for sources in the source category and shall be no less stringent than the MACT floor. Therefore, we also evaluate options more stringent than the MACT floor in determining what is achievable. These options are discussed below.

a. *Miscellaneous Organic Chemicals Manufacturing Source Category.* For existing sources, we identified options beyond the MACT floor for process vents, storage tanks, and wastewater emission points. We did not develop more stringent options than the floor for equipment leaks or transfer operations. For equipment leaks, the HON LDAR program is the most stringent program available, and, therefore, there were no above-the-floor options to consider. For transfer operations, we did not consider a beyond-the-floor option because we did not have industry-specific data indicating the existence of any above-the-floor option and because of the high level of control (98 percent) required to meet the MACT floor. We do not believe there are any beyond-the-floor options for which the cost would be reasonable. For process vents, storage tanks, and wastewater, the required performance levels (e.g., 98 percent control for process vents) are the same as for the MACT floor. However, the applicability criteria for the beyond-the-floor options are more stringent, requiring the installation of controls on a larger group of affected sources.

For batch process vents, the beyond-the-floor regulatory alternative is the control of all batch vents within a process with uncontrolled emissions of 2,270 kg/yr (5,000 lb/yr) (the MACT floor requires control of all batch vents within each process with uncontrolled emissions of 4,540 kg/yr (10,000 lb/yr)). The 2,270 kg/yr value was selected for the alternative because it represents the midpoint between the MACT floor value and no cutoff. A cutoff is necessary because the required performance level is high (98 percent) and some allowance for less cost effective or difficult to control vents should be available.

For continuous process vents, our regulatory alternative applicability level is a TRE of 5.0 (the MACT floor TRE is 2.6). This level also coincides with the new source MACT floor and is an indication that the level is technically feasible to achieve since at least one facility in the industry is currently controlling a stream(s) with this TRE.

For storage tanks, the beyond-the-floor regulatory alternative vapor pressure applicability is greater than or equal to 3.4 kPa (0.5 psia), as opposed to the MACT floor vapor pressure applicability of greater than or equal to 6.9 kPa (1.0 psia). The capacity applicability remains at 38 m^3 (10,000 gal), the size of a small storage tank. An applicability cutoff in terms of vapor pressure is reasonable so that nonvolatile materials are not required to be controlled. Therefore, we selected a vapor pressure cutoff halfway between the MACT floor applicability cutoff and zero.

For wastewater, we developed a beyond-the-floor option that changed one of the two sets of applicability criteria relative to the MACT floor. This option has flowrate and concentration applicability cutoffs of 1 lpm and 500 ppmw (the MACT floor is 10 lpm and 1,000 ppmw). We developed an option based on these applicability criteria to be consistent with the applicability cutoffs provided in the Wastewater NSPS (40 CFR part 63, subpart YYY). The beyond-the-floor option also includes the same applicability cutoffs of 10,000 ppmw at any flow rate as for the MACT floor.

For new sources, we did not develop beyond-the-floor options for process vents, transfer operations, and storage tanks because the new source floors are already more stringent than either the floor or a beyond-the-floor option for existing sources for which costs were reasonable. For equipment leaks, we did not develop a beyond-the-floor regulatory alternative because the subpart H program is already the most stringent program. For wastewater, we developed a beyond-the-floor option that combines the same performance level as the floor with the most stringent applicability cutoffs of both the new source floor and the beyond-the-floor option for existing sources. Thus, the applicability cutoffs for this option consist of 10,000 ppmw of Table 9 HAP at any flow rate, 500 ppmw of Table 9 HAP at flow rates greater than 1 lpm, and 10 ppmw of Table 8 HAP at flow rates greater than 0.02 lpm.

b. *Miscellaneous Coating Manufacturing Source Category.* We developed beyond-the-floor options, or regulatory alternatives, for all five types of emission points at existing sources and for equipment leaks and transfer operations at new sources. These options are described below. We did not develop beyond-the-floor options for process vessels, storage tanks, and wastewater emission points at new sources because the new source floors are already more stringent than either the floor or a beyond-the-floor option for existing sources for which costs were reasonable.

For stationary process vessels, we evaluated regulatory alternatives beyond-the-floor based on a higher level of control, 75 percent reduction, rather than the 60 percent reduction established in the MACT floor. For portable process vessels, we evaluated the same alternative as for stationary vessels. We evaluated the 75 percent

control level based on our knowledge of the predominant HAP in the industry and the emission stream characteristics from process vessels. We believe that the 75 percent reduction is achievable with the use of condensers, and this alternative represents a cost effective and environmentally sound strategy that results in lower secondary impacts than other strategies such as incineration.

For storage tanks, we evaluated two regulatory alternatives, both with a performance level of 90 percent (or the use of an internal floating roof or external floating roof), which is consistent with the highest performance level at an existing source. We selected a partial pressure cutoff of 1.9 psia and a tank capacity of 75 m^3 (20,000 gal) for one option because these are common cutoffs used in many other NESHAP. We also developed a second regulatory alternative with a lower capacity cutoff of 38 m^3 (10,000 gal) and the same partial pressure cutoff of 13.1 kPa (1.9 psia).

For wastewater existing sources, the beyond-the-floor option includes the same suppression and treatment requirements as the MACT floor, but the applicability cutoff was reduced from 4,000 ppmw to 2,000 ppmw. This lower concentration corresponds with the lowest concentration in a controlled wastewater stream at an existing facility in the source category, and it is one of the lowest concentrations in any wastewater stream in the source category.

For transfer operations, we developed a beyond-the-floor option for both existing and new sources that requires at least 75 percent control of HAP emissions from bulk loading of products with a HAP vapor pressure greater than or equal to 10.3 kPa (1.5 psia) and a throughput greater than or equal to 11.4 million 1/yr (3.0 million gal/yr). Emissions from bulk loading exhibit the same characteristics as emissions from the transfer of materials in process vessels (i.e., they result from displacement of gases during filling and are assumed to be saturated emission streams that can be effectively controlled using condensers). The 75 percent control requirement is achievable using condensers on these streams. Therefore, we developed this regulatory alternative to be consistent with the regulatory alternative for stationary process vessels so that the facility could use the same control for both types of emission points.

For equipment leaks, the beyond-the-floor option for both new and existing sources is the HON LDAR program. This program is the most stringent program in practice.

4. How Did We Select the Standards?

We selected the proposed standards for both source categories based on our evaluation of the floors and regulatory alternatives discussed above. When evaluating the more stringent options, we consider the costs, nonair quality health and environmental impacts, and energy requirements that accompany the expected emissions reductions. This rationale is discussed below.

a. *Miscellaneous Organic Chemicals Manufacturing Source Category.* The proposed standards for equipment leaks and transfer operations at both new and existing sources, and the standards for process vents and storage tanks at new sources, are based on the MACT floor because no beyond-the-floor option was developed. When a beyond-the-floor option was developed (i.e., for process vents and storage tanks at existing sources and wastewater at both new and existing sources), we evaluated the incremental impacts of going beyond the MACT floor.

For continuous process vents at existing sources, we concluded that the total impacts of the above-the-floor option would be unreasonable in light of the HAP emission reductions achieved. Specifically, the incremental HAP reduction achieved by the above-the-floor option is 50 Mg/yr, and the incremental cost is $61,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is 3.5 million kwh/yr (an average increase of 58,000 kwh/yr for an estimated 60 facilities with additional vents subject to control under the above-the-floor option). The incremental steam consumption for steam-assist flares is 45 million lb/yr (about 750,000 lb/yr/facility). The incremental fuel energy for natural gas (to operate incinerators and flares and to generate steam) and coal to generate the electricity is about 500 billion Btu/yr (about 8.3 billion Btu/yr/facility). Total carbon monoxide (CO), nitrogen oxides (NO_X), and sulfur dioxide (SO_2) emissions from the combustion of these fuels would increase by about 66 Mg/yr. There would be no wastewater or solid waste impacts. We concluded that the total impacts of the above-the-floor option would be unreasonable compared to the HAP emissions reductions achieved. Therefore, the proposed standard for continuous process vents at existing sources is based on the MACT floor.

For batch process vents at existing sources, we also concluded that the total impacts of the above-the-floor option would be unreasonable in light of the HAP emissions reductions achieved. The incremental HAP reduction achieved by the above-the-floor option is 145 Mg/yr, and the incremental cost is $15,000/Mg of HAP controlled. The incremental electricity consumption to operate exhaust gas fans is 5.1 million kwh/yr (an average increase of 135,000 kwh/yr for an estimated 38 facilities with additional vents subject to control under the above-the-floor option). The incremental steam consumption for steam-assist flares is 6.0 million lb/yr (about 160,000 lb/yr/facility). The incremental fuel energy for natural gas (to operate incinerators and flares and to generate steam) and coal to generate the electricity is about 340 billion Btu/yr (about 9.0 billion Btu/yr/facility). Total CO, NO_X, and SO_2 emissions from the combustion of these fuels would increase by about 66 Mg/yr. There would be no wastewater or solid waste impacts. We concluded that the total impacts of the above-the-floor option would be unreasonable compared to the HAP emissions reductions achieved. Therefore, the proposed standard for batch process vents at existing sources is based on the MACT floor.

We reached a similar conclusion for storage tanks at existing sources. For such storage tanks, the incremental HAP reduction achieved by the above-the-floor option is 30 Mg/yr, and the incremental cost is $19,000/Mg of HAP controlled. The incremental electricity and fuel consumption rates for storage tanks controlled with condensers at existing sources are 15,000 kwh/yr and 145 million Btu/yr, respectively (about 1,500 kwh/yr/tank and 14.5 million Btu/yr/tank, respectively); there would be no environmental impacts or energy requirements for other storage tanks controlled with floating roofs. The total CO, NO_X, and SO_2 emissions from fuel combustion would increase by only about 0.1 Mg/yr. We concluded that the total impacts of the above-the-floor option would be unreasonable in light of the HAP emissions reductions achieved. Therefore, the proposed standard for storage tanks at existing sources is based on the MACT floor.

Finally, we concluded that the total impacts of the above-the-floor for wastewater at existing sources would be unreasonable compared to the HAP emissions reductions achieved. For wastewater, the incremental HAP reduction for the above-the-floor option is 400 Mg/yr, and the incremental cost is about $15,000/Mg of HAP controlled. Additional wastewater streams at 24 existing facilities would be subject to the treatment requirements under the above-the-floor option. The incremental electricity and steam consumption rates to comply with these requirements, per facility, are about 47,000 kwh/yr and 8.3

million lb/yr, respectively. Incremental fuel consumption to generate the electricity and steam is about 13 billion Btu/yr/facility. Total CO, NO_X, and SO_2 emissions from the fuel combustion would increase by 33 Mg/yr. We concluded that the total impacts for the above-the-floor option for existing sources would be unreasonable. Therefore, the proposed standard for wastewater at existing sources is based on the MACT floor.

For wastewater at new sources, the differences between the above-the-floor option and the MACT floor are the same as for existing sources. Therefore, we also concluded that the incremental impacts of the above-the-floor option for new sources would be unreasonable, and the proposed standard for wastewater at new sources is based on the MACT floor.

The proposed standards apply to cleaning as well as actual production steps because we understand that vessel cleaning is integral to the process. This is consistent with operations in other industries with batch processes such as pharmaceuticals production. We are soliciting comments on cleaning procedures, emissions from cleaning, and any additional costs of controlling emissions from cleaning as part of the process.

b. *Miscellaneous Coating Manufacturing Source Category.* For the Miscellaneous Coating Manufacturing source category, we decided to propose the regulatory alternatives identified as above-the-floor for stationary process vessels at existing sources, storage tanks at existing sources, and transfer operations and equipment leaks at both new and existing sources. In these cases, we found that the incremental cost and non-air quality environmental impacts and energy requirements of going above the MACT floors are acceptable. By contrast, for stationary process vessels, portable process vessels, storage tanks, and wastewater at new sources, we are proposing standards based on the MACT floor because we determined that either the MACT floor itself is based on a very high level of control or the MACT floor requirements are more stringent than existing source regulatory alternatives for which incremental costs and other impacts were not acceptable. Similarly, for wastewater at existing sources, we are proposing standards based on the MACT floor because we determined that the incremental costs and other impacts to go above the MACT floor were not acceptable.

For stationary process vessels at existing sources, we concluded that the total impacts of the above-the-floor option were reasonable. For such stationary process vessels, we found that going from the cover plus a 60 percent control device to the cover plus a 75 percent control device reduces HAP emissions by nearly 1,700 Mg/yr and reduces annual costs by $80/Mg of HAP controlled. Assuming the control levels for both the MACT floor and the above-the-floor option are achieved using condensers, incremental electricity consumption is about 2.7 million kwh/yr (an average increase of approximately 31,000 kwh/yr per facility). To generate this electricity, fuel consumption (coal) is estimated to increase by 26.6 billion Btu/yr, and total CO, NO_X, and SO_2 emissions are estimated to increase by less than 23 Mg/yr. There would be no wastewater or solid waste impacts. Thus, we selected the regulatory alternative as the proposed standard for stationary vessels at existing sources. The proposed standard for stationary vessels at new sources is based on the MACT floor, which consists of a cover and an add-on control device that reduces HAP emissions by at least 95 percent because, as described above, we did not develop a more stringent option.

For portable process vessels at existing sources we concluded that the total impacts of the above-the floor option were unreasonable in light of the HAP emissions reductions achieved. Specifically, going from the MACT floor (a cover) to a cover plus a control device achieving 75 percent reduction reduces HAP emissions by about 400 Mg/yr. Assuming the control device is a condenser, the incremental cost is approximately $21,000/Mg of HAP controlled. In addition, electricity consumption to operate refrigeration units would increase from zero at the MACT floor to more than 900,000 kwh/yr (an average increase of about 11,000 kwh/yr/facility for an estimated 85 facilities with portable process vessels subject to additional control under the above-the-floor option). Fuel consumption (coal) to generate the electricity would increase by more than 9.0 billion Btu/yr; collectively, CO, NO_X, and SO_2 emissions would increase by 8 Mg/yr. There would be no wastewater or solid waste impacts. We concluded that the total impacts for this option were unreasonable. Therefore, we selected the MACT floor as the proposed standard for portable process vessels at existing sources. The proposed standard for portable vessels at new sources also is based on the MACT floor, which consists of a cover and an add-on control device capable of reducing HAP emissions by at least 95 percent because, as described above, we did not develop a more stringent option.

For storage tanks at existing sources, we found the impacts of the first above-the-floor option, which requires control of tanks greater than or equal to 75 m^3 (20,000 gal) storing material with a vapor pressure greater than or equal to 13.1 kPa (1.9 psia), to be reasonable compared to the HAP emissions reductions achieved. This option reduces emissions by 2.5 Mg/yr at an incremental cost of $2,700 to $4,900 per Mg of HAP controlled, depending on the characteristics of the tanks. In addition, because the above-the-floor option can be achieved using floating roofs, there are no non-air quality environmental impacts or energy requirements. However, we found the second option, which would have required control of all tanks having a capacity of at least 38 m^3 at the same vapor pressure applicability cutoff, has incremental costs of more than $17,000/Mg of HAP controlled. There would also be increased non-HAP environmental impacts and energy requirements to operate condensers to control emissions from the tanks with capacities between 38 m^3 and 75 m^3; we did not quantify these impacts. Therefore, we selected the option that requires control of tanks with capacities greater than or equal to 75 m^3 storing material with a vapor pressure greater than or equal to 1.9 psia as the proposed standard for storage tanks at existing sources. By contrast, the proposed standard for storage tanks at new sources is based on the MACT floor because, as described above, we did not develop a more stringent option.

For wastewater at existing sources, we concluded that the impacts of the above-the-floor regulatory option were unreasonable compared to the HAP emissions reductions achieved. For wastewater at existing sources, the above-the-floor regulatory option is the control of all streams with a total HAP concentration greater than 2,000 ppmw (the MACT floor was 4,000 ppmw). For the impacts analysis, we assumed that the required treatment would be achieved using a steam stripper or by sending the wastewater offsite for treatment, depending on the quantity generated. We estimated that the above-the-floor option would require treatment by one additional facility and reduce HAP emissions by less than 0.5 Mg/yr at an incremental cost of more than $200,000/Mg of HAP controlled. In addition, electricity consumption would increase by about 700 kwh/yr; steam consumption would increase by 120,000 lb/yr; energy to generate the electricity and steam would increase by 180 million Btu/yr; and total CO, NO_X, and

SO_2 emissions would increase by 0.02 Mg/yr of HAP controlled. There may also be solid waste impacts if condensed steam and pollutants from the steam stripper cannot be reused. We concluded that the total impacts for the above-the-floor option were unreasonable. Therefore, we are proposing that the standard for wastewater at existing sources be based on the MACT floor. The proposed standard for wastewater at new sources is also based on the MACT floor (i.e, the HON suppression and treatment requirements for all streams with a total HAP concentration greater than 2,000 ppmw) because, as described above, we did not develop a more stringent option.

For transfer operations, we found that the total impacts of the above-the floor option were reasonable in light of the HAP emissions reductions achieved. Specifically, the above-the-floor option would reduce HAP emissions by about 37 Mg/yr at an incremental cost of less than $3,000/Mg of HAP controlled. In addition, under the above-the-floor option, operation of a refrigeration unit at one existing facility would increase electricity consumption by about 2,150 kwh/yr; increase energy consumption by 21 million Btu/yr; and increase total CO, NO_X, and SO_2 emissions by less than 0.02 Mg/yr. There would be no non-air environmental impacts. We concluded that the total impacts for the above-the-floor option were reasonable. Therefore, for both new and existing sources, we are proposing that the emission limitation be based on the above-the-floor option which would require at least 75 percent control of HAP emissions from bulk loading of products with a HAP throughput greater than or equal to 11.4 million 1/yr (3.0 million gal/yr) and a weighted HAP partial pressure greater than or equal to 10.3 kPa (1.5 psia).

For equipment leaks, our model analysis indicates that implementing an above-the-floor option consisting of a HON-equivalent LDAR program instead of the sensory program determined to be the floor would reduce HAP emissions by 360 Mg/yr at an incremental cost of $2,700/Mg of HAP controlled. In addition, there are no environmental impacts or energy requirements associated with implementing the above-the-floor option. We concluded that the total impacts for the above-the-floor option were reasonable. Therefore, we are proposing that the standard for equipment leaks for both existing and new sources be based on the HON LDAR program or the equivalent program in the Generic MACT (40 CFR part 63, subpart UU).

The proposed standards for cleaning operations are the same as for any other process operation because controls implemented while cleaning are the same as for normal process operation. This is consistent with batch operations in other industries such as for pharmaceuticals production. For example, the MACT floor for stationary process vessels is based on controls. Cleaning operations are part of the floor because we understand that if emissions are controlled while mixing raw materials, then emissions are also controlled during cleaning. Therefore, we concluded that cleaning operations should also be included in the regulatory alternative for process vessels. Similarly, we based the MACT floor for wastewater treatment on discharges of cleaning fluids. In fact, all of our wastewater data from coatings manufacturing is from cleaning operations. We are soliciting comments on cleaning procedures, emissions from cleaning, and any additional costs of controlling emissions from cleaning as part of the process.

D. How Did We Select the Format of the Standards?

The MACT standards proposed today are presented in numerous formats. The discussion below describes the information we considered in selecting these formats. The requirements for storage tanks, transfer operations, wastewater, and equipment leaks follow formats similar to formats used in other regulations, enabling some streamlining of requirements in cases where facilities must comply with multiple regulations.

For storage tanks, the proposed standards follow the same format as in other Federal regulations. The format of the standards for storage tanks is a combination of work practice standard and emission limitation—tanks which require control must either be fitted with floating roofs or vented to add-on control devices meeting a percent removal requirement. These formats allow the owner operator maximum flexibility to comply by using an add-on control device while maintaining a simple option to comply using a work practice standard.

Work practice standards, where compliance is based on operating or equipment practice rather than specific emission limitations, have been recognized as effective ways to limit HAP emissions without the burden of characterization of actual HAP emissions and comparison against numerical limits. Section 112(h) of the CAA recognizes the need for alternative forms of standards, such as work practice standards. Therefore, work practice standards such as the use of floating roofs on tanks or LDAR programs for the control of equipment leaks are proposed in these NESHAP.

Standards for transfer operations follow the same format as the standards contained in the HON. The standards allow for vapor return of displaced materials back to the process or storage container, or require a percent reduction from uncontrolled levels achieved with the use of an add-on control device. Note that both proposed standards apply only to bulk loading into trucks or railcars. Loading into smaller vessels (e.g., drums) that do not have a dedicated vent or stack would create a capture efficiency issue, and an effective control system would likely be based on induced draft capture, which would result in a dilute emission stream. The control device for this type of system would be incineration, and it would not be cost effective. Note that the percent reduction requirement for transfer operations in the Miscellaneous Coatings Manufacturing source category is the same as that for stationary process vessels (i.e., lower than the requirement in the HON).

Standards for wastewater also follow the formats proposed in other NESHAP such as the HON. For the Miscellaneous Coating Manufacturing source category, the applicability criteria consists only of concentration because the quantity generated is of lesser importance. For the Miscellaneous Organic Chemical Manufacturing source category, we are proposing exactly the same language, including applicability, as was done in the HON.

The proposed LDAR standards reference subpart UU. That LDAR program allows less frequent monitoring and repair compared to the HON, but is as effective as the HON because it targets those components that are most likely to leak.

Because of the broad applicability of the Miscellaneous Organic Chemical Manufacturing source category, the requirements contained in these proposed standards for applicable process vent emissions sources are formatted so they can be applied to numerous types of emission sources. Requirements for process vents are structured in the format of percent reduction coupled with TRE and mass applicability limits. Requirements for batch emissions sources are based on a percent reduction from a defined uncontrolled baseline over the group of batch vents that are contained in a process, as was done in the Pharmaceuticals Production NESHAP. For continuous process vents, the requirements for control are based on

the TRE format applied in the HON. Both formats allow for a variety of control devices and are easily implemented over a variety of process vent sources.

The pollution-prevention standard is based on the premise that a reduction in consumption of HAP can be associated with a reduction in losses to air, water, or solid waste. The required 65 percent reduction in the production-indexed HAP consumption factor is equivalent to the overall reductions in emissions achieved by the emission limitations and work practice standards for process vents, storage tanks, wastewater, and equipment leaks. Consumption, rather than emissions, is tracked because it can be used as a true measure of pollution prevention; any decrease in consumption for the same unit of product produced must involve some type of increase in process efficiency, including reduction of waste, increased product yield, and in-process recycling. The pollution prevention alternative standard only applies to chemical manufacturing batch processes because the batch process vent standards apply to all vents from the process. The continuous process vent standard applies to single vents and is not a process based standard. Since the TRE for continuous vents is applied after the last recovery device, pollution prevention has already been considered in the applicability of the control requirements for continuous vents.

For the Miscellaneous Coating Manufacturing source category, process emission sources are vessels used to mix and transfer materials used to make coatings. For process vessels, the standards are a combination of work practice standard and percent reduction. The requirement to maintain a sealed and gasketed cover is a work practice standard. Without such an equipment standard, it would be difficult to demonstrate capture of displaced vapors into the control device.

Generally, both mixing operations and transfer operations are conducted at ambient temperatures. The HAP used in coating manufacturing operations include toluene and xylene. Based on this narrow set of operating conditions, process vent and transfer operation emissions from this source category are expected to generally result from displacements; emission streams from these displacement events are expected to be saturated at ambient conditions. The choice of control devices is narrower than in the previous source category. In general, we expect that the use of condensers will satisfy the control requirements.

We are, therefore, proposing the use of an additional format for demonstrating compliance with the stationary process vessel standards and the transfer operations standards that is based on achieving preset condenser outlet temperatures that correspond to ranges of material vapor pressures. This option is intended to simplify the compliance demonstration because it eliminates the demonstration of 75 percent reduction using uncontrolled and controlled emission estimates. The preset ranges are presented in Table 1.

TABLE 1.—REQUIRED CONDENSER EXIT GAS TEMPERATURES

HAP partial pressure ranges at 25°C, kPa (Psia)	Required outlet gas temperatures, °C
<0.7 kPa (0.1 psia)	10
≥0.7 kPa (0.1 psia) to <17.2 kPa (2.5 psia)	2
≥17.2 kPa (2.5 psia)	−5

These values were set by calculating, on average, necessary temperatures to condense 75 percent of the HAP in streams predominantly composed of materials representing vapor pressure ranges of xylene, toluene, and methanol, common materials in this industry. For wastewater streams, applicability is based only on the wastewater constituent concentrations and follows waste disposal practices for compliance with RCRA since the scale of operations generally precludes the installation and operation of wastewater treatment systems.

We considered other format options for MACT standards, including using mass emission rates and outlet concentrations. For the Miscellaneous Organic Chemicals Manufacturing source category, we concluded that a percent reduction format allows the most flexibility in terms of defining the floors and in terms of compliance with the standard. A mass rate standard could not easily be established that would apply to the multitude of operations covered by the standards because of the variability in products, materials, and processing conditions. For example, we would not want to set a MACT floor based solely on an emission limit that would be easily met by some sources because of the nature of their operation, but could not be achieved by all sources in the category. However, we note that the 4,540 kg/yr (10,000 lb/yr) applicability limit for batch process vents is a type of mass emission limit. When coupled with the percent reduction, the mass limit allows owners and operators some flexibility in determining what portions of processes to control. Yet, the complementing portion of the standard also offers a percent reduction to enable all facilities in the source category to comply. No mass limit is proposed for the Miscellaneous Coating Manufacturing source category because we could not establish an acceptable emissions limit below which no control would be required, based on the MACT floor.

We are also proposing a concentration standard as an alternative to a percent reduction standard for process vents and storage tanks. This alternative standard was also provided in the Pharmaceuticals Production NESHAP as a means of complying with that NESHAP by manifolding multiple vents or sources to a common device. Sources can comply by continuously monitoring the outlet concentration of the control device using a continuous emissions monitoring system (CEMS) and ensuring that the TOC concentration does not exceed 20 ppmv for combustion devices or 50 ppmv TOC for noncombustion devices. If halogenated compounds are present, you must also monitor for hydrogen halides and halogens and maintain these concentrations to below 20 ppmv.

E. How Did We Select the Testing and Initial Compliance Requirements?

Testing and initial compliance demonstration provisions contained in the NESHAP are based on the requirements contained in the HON for continuous process vents, transfer sources, and wastewater sources, the Generic MACT for storage tanks, and the Pharmaceuticals Production NESHAP for batch process vents and coatings process vessels. We believe that it is reasonable to use the HON and Generic MACT compliance demonstration provisions requirements for the above sources because the formats are consistent with the HON and Generic MACT requirements, and because we expect many affected sources are already familiar with the provisions, especially those sources that have colocated miscellaneous organic chemical manufacturing process units and HON units. The Generic MACT compliance provisions for certain sources (fired sources such as boilers and process heaters) also closely follow requirements contained in the NSPS, and, therefore, owners and operators of miscellaneous coatings facilities may also have some familiarity for these types of sources. In the interest of streamlining requirements for title V permits, using these existing provisions may also provide opportunities for

condensing identical or similar requirements.

The testing and initial compliance demonstration provisions of the Pharmaceuticals Production NESHAP are referenced for miscellaneous organic chemical manufacturing batch process vents and for miscellaneous coatings stationary process vessels because that NESHAP considers the issues associated with the characterization and control of batch emission sources. There are two important concepts contained in the Pharmaceuticals Production NESHAP that will also apply to the batch sources in these source categories, and they are: (1) The use of emission estimation equations to determine uncontrolled and controlled emissions, and (2) the consideration of aggregated batch emission sources in the development of an initial compliance demonstration under worst case conditions. There are more reliable, less costly methods to characterize emissions from batch processes using accepted methodologies to estimate emissions from batch emission sources rather than using testing strategies that are limited in data. This is because the characteristics that drive emissions, flow and concentration, often vary independently of each other in batch emission events. The use of a single data point for flow and one for concentration may not be representative of emissions over the event. Conversely, the use of accepted emission estimation methodologies provides a consistent set of guidelines for calculating emissions and is especially important in these proposed NESHAP, since compliance rests on demonstrating a percent reduction from an uncontrolled value. The uncontrolled value must be calculated consistently in order for the NESHAP to be fairly and consistently applied across the industry.

As a related issue, we have also required the same process condenser control efficiency demonstration requirement as in the Pharmaceuticals Production NESHAP for some batch process vents in miscellaneous organic chemicals manufacturing sources. As in the Pharmaceuticals Production NESHAP, we proposed to exclude from the demonstration requirement any process condensers followed by secondary condensers that would be considered air pollution control devices and air pollution control devices complying with the alternative standard. This compliance procedure for process condensers is being proposed to ensure that owners and operators will accurately characterize uncontrolled emissions.

The emission estimation methodologies provided in the Pharmaceuticals Production NESHAP and referenced in these proposed NESHAP were also used in the Polymers and Resins NESHAP (40 CFR part 63, subparts U and JJJ). They are based on accepted vapor-liquid equilibrium principles and were reviewed extensively during the development of the Pharmaceuticals Production NESHAP.

The worst-case testing provisions are structured to account for the most challenging conditions to which a control device will be exposed. The initial compliance demonstration is also tied to the continuous compliance demonstration in that an operating parameter is used as an indicator of the control device's performance over time, and the operating parameter is first ''calibrated'' against the control efficiency achieved by the device during the initial compliance demonstration. Therefore, the initial compliance demonstration must be conducted at the most challenging conditions in order to ensure continuous compliance under all other conditions. However, the proposed NESHAP are structured such that monitoring is required only for those events that are controlled for the purposes of complying with the proposed NESHAP.

We also have provided some language in the proposed NESHAP that clarifies appropriate methods for demonstrating compliance with percent reduction requirements and emission concentration limits on combustion devices. The proposed NESHAP 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 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.

Initial compliance with the pollution-prevention alternative would be accomplished by documenting yearly quantities of HAP raw materials and products using available records, including standard purchasing and accounting records, and periodically calculating annual rolling totals of the production-indexed HAP consumption factor for comparison with the baseline value. The factor must be calculated every 30 days for continuous processes, and every 10 batches (up to once per month) for batch processes.

F. How Did We Select the Continuous Compliance Requirements?

Monitoring is required by the proposed NESHAP to determine whether a source is in compliance on an ongoing basis. We selected the continuous compliance requirements based on a combination of general monitoring requirements in the General Provisions (subpart A) and specific monitoring requirements for the HON and Pharmaceuticals Production source categories.

1. General Monitoring Requirements

As specified in § 63.8(c) of the General Provisions, sources must record the data from their monitoring systems at least once every 15 minutes. However, for control devices that are determined to control less than 0.91 Mg/yr (1 ton/yr) of HAP, the proposed subparts require only a daily verification that the devices are operating as required, consistent with the referenced Pharmaceuticals Production NESHAP. We are also referencing limits for the minimum amount of data that can be recorded to demonstrate compliance with the proposed NESHAP, based on requirements in the HON and the Pharmaceuticals Production NESHAP.

Sources would be required to calculate either daily or block averages of their operating parameter values for the purpose of ensuring continuous compliance. We selected the daily or block averaging times referenced in the Pharmaceuticals Production NESHAP again following consistency with the initial compliance demonstration.

2. Continuous Monitoring

When determining appropriate monitoring options, we consider the availability and feasibility of the following strategies in a ''top-down'' approach: (1) CEMS for the actual HAP emitted, (2) CEMS for HAP surrogates, (3) monitoring operating parameters, and (4) work practice standards. In evaluating the use of CEMS in these proposed NESHAP, monitoring of individual HAP species may not be reasonable or technically feasible for many streams. For those cases where it is feasible, CEMS meeting Performance Specification 9 or 15 may be used to measure and report emissions as individual HAP compounds. However, in the case of continuous monitoring of surrogates, continuous TOC monitoring is considered a viable and efficient monitoring option and is provided in these proposed NESHAP. The alternative standard makes use of CEMS that meet Performance Specification 8 that have been calibrated using the predominant HAP in the stream. The results must be reported as carbon when compared to the 20 ppmv emission limit for combustion devices or 50 ppmv emission limit for noncombustion devices. To monitor hydrochloric acid emissions, you must either use a CEMS that meets Performance Specification 15, or if you wish to use a CEMS for which we have not promulgated a Performance Specification, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8 of the General Provisions. The requirement to submit a monitoring plan for approval is an interim solution that is necessary until we promulgate applicable Performance Specifications.

Monitoring of control device operating parameters is considered appropriate for many other emission sources, and therefore, most of the other monitoring options provided in the proposed NESHAP are based on parametric monitoring.

Based on information from the source categories, we selected operating parameters for the following types of control devices that are reliable indicators of control device performance: thermal and catalytic incinerators, flares, carbon adsorbers, scrubbers, and condensers. In general, we selected parameters and monitoring provisions that are contained in the HON and in the Pharmaceuticals Production NESHAP. The range of parameter limits in both NESHAP should cover both batch and continuous production processes. Sources would monitor these operating parameters to demonstrate continuous compliance with the emission limitations and operating limitations.

We are also proposing monitoring parameters for catalytic incinerators that are different from parameters that have been required to be monitored in existing NESHAP. Instead of requiring monitoring of the temperature differential across the catalyst bed, we are proposing that the inlet temperature into the incinerator be monitored, since we believe that this parameter would be a better indicator of overall incinerator performance for the type of emission stream characteristics we expect to find in these source categories. For low flow or dilute concentrations, we believe that it may not always be possible to achieve the recommended temperature differential. We are also proposing to require an annual catalyst test to verify that the catalyst activity is still acceptable.

3. Other Monitoring

You may choose an alternative to the monitoring required by the proposed NESHAP. If you do, you must request approval for alternative monitoring according to the procedures in subpart A, § 63.8, or you must request the approach in your precompliance report.

The proposed NESHAP also contain monitoring for work practice standards involving periodic inspections for equipment integrity. These monitoring requirements include storage tank seal inspections, wastewater component surface inspections, and bypass and closure device inspections and are also required by the HON and the Pharmaceuticals Production NESHAP.

G. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements based on generic requirements in the General Provisions and specific requirements for the HON and Pharmaceuticals Production NESHAP.

1. Notification Requirements

The notification requirements in the proposed NESHAP include initial notifications, notification of performance test, notification of compliance status, and notification dates. These notification requirements are based on requirements in §§ 63.6(h), 63.7(b) and (c), 63.8(e) and (f), 63.9(b), (f), and (h), and 63.10(d)(2) of the General Provisions.

2. Reporting Requirements

The reporting requirements that we selected include semiannual compliance reports, required in § 63.10(e)(3), and immediate startup, shutdown, and malfunction reports, required in § 63.10(d)(5)(ii). If there are no deviations from the standards during the reporting period, then your semiannual compliance report must include a statement to that effect. If there were deviations from the standards during the reporting period, then your semiannual compliance report must include the information listed in Table 15 of the proposed subpart FFFF or HHHHH. For each deviation where a CEMS is used to comply with the standards, your compliance report must also include the information in §§ 63.8(c)(8), 63.10(c)(5) through (13), and 63.10(e)(3)(vi). If there was a startup, shutdown or malfunction during the reporting period, and you took actions consistent with your startup, shutdown, and malfunction plan, then your compliance report must include the information in § 63.10(d)(5)(i). The submittal date for the compliance report is based on information in § 63.10(e)(3)(v).

If there was a startup, shutdown, or malfunction during the reporting period, and you took actions inconsistent with your startup, shutdown, and malfunction plan, then you must submit an immediate startup, shutdown, and malfunction report. The report must include the actions taken for the event and the information provided in § 63.10(d)(5)(ii). The submittal date for the immediate startup, shutdown, and malfunction report is based on § 63.10(d)(5)(ii).

3. Recordkeeping Requirements

The proposed NESHAP require you to maintain a copy of each notification and report, as well as documentation supporting any initial notification or notification of compliance status, according to the requirements in § 63.10(b)(1)(xiv). You must also keep the records in § 63.6(e)(3) related to startup, shutdown, and malfunction; records of performance tests and performance evaluations, as required in § 63.7(g)(1); and records for each CEMS and parameter monitoring system.

The records for the CEMS would include the records described in § 63.10(b)(vi) through (xi); superseded

versions of the performance evaluation plan, as required in § 63.7(d)(3); and the request for alternatives to a relative accuracy test for CEMS, as required in § 63.8(f)(6)(i). The records for the parameter monitoring system would include records of operating limits and parameter monitoring data. You must keep records of all material balances and calculations documenting the percent reduction in HAP emissions used to demonstrate compliance with the standards.

H. What Is the Relationship of These Proposed NESHAP to Other Rules?

This section discusses the relationship between today's proposed NESHAP and other Federal rules covering facilities containing sources in these source categories. This section also discusses the relationship between proposed subpart HHHHH and MACT rules that are currently under development for source categories in the Surface Coating Processes Industry Group.

In today's proposed NESHAP, we cross-reference pertinent existing rules to maintain consistency with other Federal standards. Subparts GGG (the Pharmaceuticals Production NESHAP) and SS (the Generic MACT) contain requirements for emissions sources that are similar to those found in these source categories. These existing standards reflect the current Agency positions that have been developed through numerous rulemaking efforts. By maintaining consistency with these existing standards, we believe we have reduced the burden to regulators and industry in limiting the amount of material that must be understood in order to comply. However, we are interested in your specific suggestions for reducing the overall burden of the NESHAP without jeopardizing their enforceability or our overall emission reduction goals.

Because of the broad applicability of proposed subpart FFFF, another issue with regard to the relationship of these rules to other existing MACT rules is that applicability could appear to fit more than one source category in some cases. We have, therefore, included options that allow compliance with one rule in cases where dual MACT coverage of the same affected source might occur. For example, we are allowing affected sources with equipment subject to the equipment leak standards or wastewater standards contained in subpart GGG to comply with the proposed subpart FFFF for all such equipment. Lastly, we have also included provisions that allow compliance with the provisions of these standards in cases where other rules overlap and affect the same affected sources. These provisions apply to sources that must comply with RCRA requirements at 40 CFR parts 264, 265, and 260 through 272; NSPS requirements at part 60, subparts Kb, III, NNN, and RRR; and NESHAP requirements at part 63, subpart H.

Coatings manufacturers are not only potentially subject to proposed subpart HHHHH, but their products and production operations may change as their customers demand coatings that will comply with the requirements of MACT rules for source categories in the Surface Coating Processes Industry Group. Therefore, the coatings manufacturers have requested that we coordinate the timing of the various surface coatings MACT rules and subpart HHHHH so that they have a chance to assess how their production operations may change. We recognize this concern, and we will attempt to coordinate the timing of these rules, while also considering our obligation to promulgate all MACT rules by May 2002 so that States are not required to develop MACT on a case-by-case basis. We are also soliciting comments on how best to coordinate these rules.

I. What Types of Comments Are Being Specifically Requested by the Administrator?

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or referenced supporting documents. The proposed rule was developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken or an alternate approach. In order to receive proper consideration, documentation or data should be provided. This section requests comments on specific issues identified during the development of the standards.

1. What Comments Are We Soliciting on MACT Floor Determinations?

We are requesting comments and data on establishing the MACT floor for processing vessels in coating manufacturing at new sources. The new source MACT floor for processing vessels is 95 percent reduction of HAP for stationary and portable vessels that have a capacity greater than 250 gallons. Seven facilities reported control levels for stationary processing vessels of 95 percent or greater. Two of these facilities reported control levels for portable vessels of 95 percent and greater. Two facilities reported control levels of 99 percent. These processing vessels include removable and fixed roofs and are controlled by thermal oxidizers, carbon adsorbers, and condensers. We determined that 95 percent reduction represents the control level for the best controlled source with consideration given to similarity of sources and total HAP emissions control. For example, one facility reported 95 percent control device efficiency for their portable and stationary vessels equipped with fixed roofs and vented to a thermal oxidizer. We seek comments and data on the representativeness of the facilities as similar sources on which the proposed new source MACT floor is based and the feasibility of controlling emissions from all process vessels at a facility at the proposed 95 percent control level.

We are requesting comments and data on establishing the MACT floor for stationary process vessels at existing coating manufacturing sources. As discussed earlier in this preamble, the proposed MACT floor consists of a cover on the vessel and venting exhaust to a control device that reduces emissions that it receives by at least 60 percent. This control level represents the average of the control levels for the best performing 12 percent of stationary process vessels. We used the average, or mean, instead of the median because the control device efficiencies represented a fairly even, though wide, distribution and a representative control device is available at the mean. However, a large number of vessels in the top 12 percent were not controlled. We are requesting comments on whether the central tendency of the best performing 12 percent of stationary process vessels should be represented by the mean or the median. The median control level achieved for the best performing 12 percent of the vessels is 80 percent. The mean, which is derived by averaging the control efficiencies of both controlled and uncontrolled facilities, results in a level of control that is not actually achieved by any control device in the MACT floor dataset, although the mean is readily achievable with a representative control device for this industry (*i.e.,* condenser). The median represents both a central tendency and a level of control currently being achieved with add-on control. We are soliciting comments on whether we adequately characterized the MACT floor level of control for process vessels at coating manufacturing facilities.

We are requesting comments and data on the basis for establishing the MACT floor for continuous vents in miscellaneous organic chemical manufacturing at existing sources. As

discussed previously in this section, the MACT floor for continuous process vents at existing sources is 98 percent reduction for vents meeting a TRE of 2.6. The MACT floor determination was based on 5 facilities which represented the top 12 percent of the sources. The data used to determine the MACT floor were collected prior to 1996, and in order to move forward with rule development we have not continued to update the information. It has recently come to our attention that some of the data may have changed. Specifically, a plant used in the floor calculation may have closed down. We are soliciting comments on whether we adequately characterized the MACT floor level of control for continuous vents at organic chemical manufacturing facilities.

We are requesting comments and data on establishing the MACT floor for equipment leaks for organic chemical manufacturing sources. We have information on 229 facilities indicating that the LDAR program implemented at 30 facilities is the HON LDAR program or a program equivalent to the HON. We are soliciting comments on whether we adequately characterized the MACT floor level of control for equipment leaks from organic chemical manufacturing.

2. What Comments Are We Soliciting on Definitions?

We are soliciting comments on the definitions of ''batch process,'' ''process vent,'' ''isolated intermediate,'' and ''family of materials'' in the proposed subpart FFFF. The first two definitions are similar to the definitions in 40 CFR part 63, subpart GGG, where a ''process'' means all equipment which function to produce a product or isolated intermediate, and an ''isolated intermediate'' means the product of a process that is stored before further processing. Two important differences between subpart GGG and the proposed subpart FFFF are that precursors are not relevant in the proposed subpart FFFF and that the term ''process'' in the proposed subpart FFFF applies to a family of products. Because the batch process vent standard in the proposed subpart FFFF applies only if the process vents from a single process emit 10,000 lbs/yr HAP; the definition of process is very critical to applicability determinations. It is our intent that the end of a process is marked by long time storage, storage for the purpose of shipping product offsite, or storage for the purpose of building inventory. A process is not an intermediate step in the continuous sequence of steps to produce a final product. In addition, we believe that production of chemicals that vary only slightly in molecular structure, functional groups or other characteristics and are produced by procedures that have essentially identical emission sources and emission stream characteristics should be considered as one process. We use the term ''family of materials'' to describe these types of materials, and the production of these similar products must be grouped into one ''process'' for the purposes of complying with the proposed subpart FFFF. In stakeholder meetings, industry representatives have stated that the proposed definition is not clear regarding which types of products must be included in a family. One suggestion was to include specific criteria about the product characteristics, emissions, and processing steps that materials must have in common in order to be part of a family of materials. Therefore, we are soliciting comments on applicable criteria or other ways to clarify this definition.

According to the proposed definition of ''process vent'' in subpart FFFF, emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP are not considered process vents. We are requesting comments on the emission stream to which the 50 ppmv criterion should be applied for batch process vents. One approach would be to apply it to each emission episode (*e.g.,* vapor displacement, purge, drying, etc.) in a process, regardless of the point from which it is emitted. Another approach would be to combine all of the emission episodes that are released from a particular point (*e.g.,* vapor displacement and depressurization from a reactor vent), and determine the average concentration for the aggregated stream. We are interested in data for a situation where one emission episode has a concentration above 50 ppmv, but all other emission episodes released from the same point, and the combined stream for the emission point, have concentrations below 50 ppmv. We are interested in rationale supporting the choice of either of the presented approaches or any other approach.

We are requesting comments on the definition of ''coating manufacturing'' in § 63.7985(b) of the proposed subpart HHHHH. It is not our intent to include end-users in the definition of manufacturers; however, several end-users have mixing operations similar to the activities of coating manufacturers with comparable HAP emissions. To address these operations, we are considering developing requirements for a separate class of coating manufacturers who produce the coating for captive use. We do not have data to show there is a floor for such operations, but we are evaluating the costs to control the emissions. We seek comments on costs to control emissions from, and an appropriate size cutoff for, such a class of manufacturers.

For both miscellaneous coating and organic chemical manufacturing facilities, the term ''cleaning operation'' is defined as in 40 CFR 63.1251 as ''routine rinsing, washing, or boil-off of equipment in batch operations between batches.'' As discussed in sections II.D and III.C, ''cleaning operations'' are considered to be part of the process in which the cleaning operations occur and are subject to the same requirements as any other process step. Cleaning the exterior of equipment is not considered to be part of the ''cleaning operations,'' and emissions from cleaning an existing portable vessel are not required to be controlled under the proposed rule. We are soliciting comments on the approach. Specifically, we are interested in information on cleaning procedures (*e.g.,* whether tanks have automatic wash systems and/or have to be washed by hand; whether tank lids or covers have to be taken off and remain off to gain and maintain access for workers), venting during cleaning, and any additional costs of controlling emissions during the cleaning step as part of the process.

3. What Comments Are We Soliciting on Standards That Overlap?

Compliance options for chemical manufacturing facilities subject to both the proposed subpart FFFF and another subpart are in 40 CFR 63.2535. Multipurpose equipment subject to standards under the proposed subpart FFFF may also be subject to standards under another rule. Such is the case with equipment leaks. To minimize the compliance burden, we have included provisions that allow you to comply only with the equipment leak provisions in the proposed subpart FFFF for all equipment subject to subparts GGG and MMM at a facility with an affected source under the proposed subpart FFFF. We are requesting comments on other areas where different standards may overlap, the difficulties posed by such overlapping standards, and ways to reduce the monitoring, recordkeeping, and reporting burden of complying with the requirements of the proposed subpart and another subpart.

4. What Comments Are We Soliciting on Pollution Prevention?

We are soliciting comments on the pollution prevention alternative standard for miscellaneous organic

chemical manufacturing in proposed subpart FFFF. The pollution prevention standard uses the same format as the standard in 40 CFR part 63, subpart GGG. We especially seek information on alternative measures of source reduction and pollution prevention. Note that since the TRE for continuous vents is applied after the last recovery device, pollution prevention is already incorporated into the standard for continuous processes.

No such pollution prevention alternative is currently proposed for coating manufacturers; however, since the proposed rule for coating manufacturers does not apply to coatings that contain less than 5 percent HAP, reformulation is a possible pollution prevention alternative. We are soliciting information and comments on pollution prevention alternatives for coating manufacturers.

5. What Comments Are We Soliciting on Testing?

Subpart GGG contains testing requirements that differ depending on the amount of HAP treated; for example, if a control device receives less than 10 tons per year HAP, then a performance test is not required. We are considering similar requirements for miscellaneous organic chemical manufacturing facilities. We seek information on practicable testing procedures for batch processes and comments on testing provisions in subpart FFFF.

6. What Comments Are We Soliciting on MACT Standards for Process Vessels at Coating Manufacturing Facilities?

The process vent standard for the proposed subpart HHHHH applies to each stationary process vessel greater than 250 gallons. The standard for stationary vessels includes the work practice standards for closed vent systems as required in 40 CFR part 63, subpart SS. We are requesting comments and data on the types of vent systems used on process vessels to capture emissions from the vessels in coating manufacturing facilities with control devices; the costs associated with the installation of such systems; and any problems encountered where closed vent systems are in use, for example, involving worker health and safety issues; the ability to capture all emissions from the vessel; drawing out and evaporating solvents from the coating mix in the vessel, thereby affecting product; and interfering with the ability to add raw material to the vessels.

We are requesting comments on alternative formats for the standard that applies to stationary process vessels in proposed subpart HHHHH, such as a standard that applies to all processing vessels as a whole instead of each vessel individually. In considering alternatives, we will examine other formats to ensure that compliance can adequately be demonstrated and acceptable records can be maintained. Further, we are requesting information on the application, effectiveness, and cost of alternative control technologies or approaches for process vessels.

As already noted, the emission reduction requirements in the proposed subpart HHHHH represent an overall HAP control efficiency for the process vessel. Overall control includes capture efficiency of emissions from the process vessels' vented cover or lid through the closed vent system and the recovery or destruction efficiency of the control device. We seek comments on demonstrating compliance for overall control of HAP from process vessels.

The cost of the standard for stationary process vessels is based on several assumptions. The representative control technology is refrigerated condensation. For sizing purposes, we assumed no more than five vessels would be filled simultaneously. The modeled vent stream was saturated with toluene. The flowrate was assumed to be 100 scfm. The cost of the refrigeration units were estimated using the model developed for the Office of Air Quality Planning and Standards. We are requesting comments and information on these assumptions and model, the characteristics of vent streams from process vessels, and the costs associated with the proposed standards.

7. What Comments Are We Soliciting on Explosives Production?

As discussed in section III.A., we are soliciting comments on whether process vent emissions from explosives production processes should be treated as a separate class of emission streams subject to a lesser degree of control than that required for process vents from other types of processes in the source category. For example, we are specifically soliciting comments on the performance achievable and costs associated with using condensers, although we are also interested in information about other types of controls. One option we are considering is control based on the use of condensers operated at the default temperatures that are being proposed for coatings manufacturing, and we are soliciting comments on whether these default values (or others) would be appropriate for some or all of the processes in the explosives production industry. If we do develop standards for process vents from explosives manufacturing as a separate class of process vents within the source category, we need to be able to clearly define the affected processes. Because explosives are often referred to as ''energetics,'' we are considering using this term to define the class of processes, and we are soliciting comments on what the definition of ''energetics'' should be.

8. What Comments Are We Soliciting on the Emission Estimates for Coating Manufacturing?

We are requesting data and information on HAP emissions from process vessels and other process units at coating manufacturing facilities. The AP–42 emission factor for paint manufacturing is 30 pounds of volatile organic compounds (VOC) per ton of product. The AP–42 has an emission loss factor of between 1 percent and 2 percent for paint mixing operations. We used 1 percent of the total HAP throughput at the facility to determine the uncontrolled HAP emissions from process vessels. The industry has stated their preference to base HAP emission calculations on the ''Preferred and Alternative Methods for Estimating Air Emissions from Paint and Ink Manufacturing Facilities'' chapter of ''Stationary Point Source Emission Inventory Development'' prepared as part of the Emission Inventory Improvement Program (EIIP). The EIIP is a jointly sponsored effort of the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and EPA with the stated goal to provide cost-effective and reliable inventories. The preferred method is the use of emission models, and alternative methods are the use of emission factors, material balances, and test data. We believe that emission factors and material balances apply more to an entire process, emission models and test data apply most often to only a step in the process and therefore may not account for all losses. To develop a valid estimate of uncontrolled (or baseline) emissions using the emission models for material loading, heat-up, surface evaporation, and vessel cleaning, we would need to obtain a considerable amount of additional data. For example, we would need to know the typical number of vessels through which the material travels in production processes, the temperature of heat-up and the number or percentage of processes that have a heat-up step, the number of batches per year, the frequency of cleaning, and the volume of material used in cleaning. Material

balances, however, by their very nature, account for all losses. Other, more resource-intensive methods, also can account for all losses. For example, losses from process vessels and equipment leaks from equipment enclosed in a building could be estimated if the building exhaust concentration and flows could be measured accurately. However, a material balance would be easier to do, since input data such as accounting records and material product specifications are presumably already available. Therefore, we believe that an emission estimating procedure that has been validated with material balance data will provide the most accurate method for estimating emissions. Without material balance data or other more robust methods, we think that the AP–42 emission factor best estimates total HAP emissions and gives results most consistent with the definition of major source in section 112(a) of the CAA as well as in § 63.2 of 40 CFR part 63, subpart A.

We are soliciting comments on the foregoing approaches, and because we do not have the necessary information for the coatings industry to use more robust methods, we are requesting data and information on HAP emissions from process vessels and other operational units at coating manufacturing facilities as well as mass balance data to help us develop more representative emissions factors, including factors specific to this industry.

9. What Comments Are We Soliciting on the MACT Standard for Equipment Leaks at Coating Manufacturing Facilities?

Equipment leak HAP emissions from coating manufacturing were estimated using the same emission factors used for organic chemical manufacturing because we lacked initial leak frequency data. Without industry specific leak rate data, we have no basis for using anything other than the AP–42 emission factor for equipment leaks. Therefore, we are soliciting initial leak frequency data to help us develop emission factors for equipment leaks in coating manufacturing operations.

In light of the paucity of leak data from coating manufacturing operations, we are considering providing an alternative to compliance with the HON-equivalent equipment leak requirements in the proposed subpart HHHHH. The alternative would reduce emissions beyond the floor level of control by requiring covers on all process vessels. Instead of complying with the leak detection and repair (LDAR) program in 40 CFR part 63 subpart UU, which is similar to the HON requirements, the owner or operator would choose to comply with the MACT floor (a sensory LDAR program as required in 40 CFR part 63, subpart R) and cover all open process vessels at the affected facility (*i.e.,* including all vessels equal to or smaller than 250 gallons that are not subject to the requirements for process vessels). Under this alternative, we envision an LDAR work practice standard that requires the following: (1) Performing a monthly leak inspection of all equipment in HAP service, using detection methods incorporating sight, sound, and smell; (2) inspections that are conducted during periods when the process is operating; (3) initial attempts at repair are made no later than 5 days after leak detection, and repairs be completed within 15 days of leak detection, unless delay of repair is allowed based on a demonstration that repair in this time period is not feasible; and (4) all portable and stationary process vessels with a capacity less than or equal to 250 gallons are equipped with a cover or lid that must be in place at all times when the vessel contains a HAP. The covers or lids could be of solid or flexible construction, provided they stay in place. To demonstrate initial compliance, you would be required to maintain a log with a list of the equipment, a diagram, or some other means of identifying the number of components and their location, and you would be required to note in your Notification of Compliance Status that you have the required covers for the small process vessels. To demonstrate continuous compliance, you would be required to record in the log the identity of the leaking components (either individually or by area), the date of leak detection, and the date of repair, and you would be required to sign the log book after each inspection to verify completion and accuracy. This alternative, including both the sensory LDAR program and the requirement to cover vessels less than 250 gallons, would go in entry 1. in Table 4 as an alternative work practice standard for each piece of equipment that is in organic HAP service and is not described in 40 CFR 63.1019(c) through (e). We are requesting information on the effectiveness and cost of covering all tanks less than or equal to 250 gallons. Information that would assist us in estimating the effectiveness of this alternative includes types of flexible covers used by the industry, industry practice of using covers on small vessels, cost of covers, and the typical number of small process vessels relative to the total number of process vessels (or relative to the number of process vessels greater than 250 gallons) at a facility.

We are soliciting comments and data on both control alternatives. Whether we promulgate one of the two alternatives or both alternatives will depend on the comments and data we receive and the results of the regulatory impact analysis.

10. What Comments Are We Soliciting on Coordination of MACT Standards Affecting the Coating Industry?

As discussed in III.H., we recognize that coating manufacturers may have to change their production processes in response to demands for different products that will comply with the MACT standards for surface coating application. We intend to coordinate the promulgation of subpart HHHHH and the coating application rules to the extent possible, recognizing that we must promulgate all MACT standards by May 2002. Therefore, we are soliciting comments on ways to coordinate the timing of these rules.

11. What Comments Are We Soliciting on Wastewater Standards for Organic Chemical Manufacturing?

Representatives of the chemical industry have suggested that it would be more appropriate to regulate wastewater streams containing mostly or entirely soluble HAP compounds differently than streams containing significant amounts of partially soluble compounds. They have submitted examples of wastewater streams that do not volatilize appreciably while in open sewer lines en route to the biological treatment unit, and suggest that EPA either establish an alternative floor of open sewer lines and biological treatment for this subcategory of wastewater streams, or not require closed conveyance for such streams.

We are soliciting comments and data concerning wastewater streams containing only soluble HAP (less than 50 ppmw partially soluble HAP) that would be subject to the proposed rule to determine whether they represent a separate class of wastewater (or processes from which the streams originate) as compared to HON wastewater. The data should include stream flow volume, stream HAP concentrations, stream temperature at the point of determination, control option currently used to treat the stream, and whether the lines or sewer system used to convey the stream is closed or open.

The HON requires that the sewer system conveying an affected

wastewater stream be closed. We understand from the industry that most sources have complied with the HON by installing steam strippers at the process so the existing sewer system did not have to be retrofitted down to the biological treatment unit. We are requesting owners and operators of processes covered by the proposed rule to comment on the installation of steam strippers at the process.

We are also requesting information on unit operations that remove methanol or other soluble HAP from wastewater as efficiently as the design steam stripper in the HON.

12. What Comments Are We Soliciting on Process Change Management?

We are soliciting information on process change management as it relates to title V permits. The 40 CFR part 70 regulations allow the source to account for operating scenarios the source owner or operator reasonably anticipates over the source of the permit term, without need for permit revision (40 CFR 70.6(a)(9)). Change management strategy is discussed in detail in the preamble to the promulgated NESHAP for Pharmaceuticals Production (63 FR 50309, September 21, 1998). We are soliciting comments on change management and especially change management for owners and operators complying with the proposed alternative standard that limits the outlet concentration of the control device.

IV. Summary of Environmental, Energy, and Economic Impacts

A. Miscellaneous Organic Chemical Manufacturing

The basis for the estimated impacts for existing sources subject to the proposed NESHAP is discussed in a series of memoranda in the docket.

1. What Are the Air Quality Impacts?

We estimated nationwide baseline HAP emissions from the Miscellaneous Organic Chemical Manufacturing source category to be 44,700 Mg/yr (49,300 tons/yr). We estimated that the proposed standards in subpart FFFF will reduce HAP emissions by about 28,000 Mg/yr (31,000 tons/yr). Because many of the HAP emitted by miscellaneous organic chemical manufacturing facilities are also VOC, the proposed NESHAP also will reduce VOC.

Combustion of fuels in combustion-based control devices and to generate electricity and steam would increase secondary emissions of CO, NO_X, SO_2, and particulate matter less than 10 microns in diameter (PM_{10}). We estimate that these emissions would increase by about 1,270 Mg/yr (1,400 ton/yr). These impacts were estimated assuming electricity is generated in coal-fired power plants, steam is produced in natural gas-fired industrial boilers, and natural gas is used as the auxiliary fuel in incinerators and flares.

2. What Are the Cost Impacts?

The cost impacts include the capital cost to install control devices and monitoring equipment, and include the annual costs involved in operating control devices and monitoring equipment, implementing work practices, and conducting performance tests. The annual cost impacts also include the cost savings generated by reducing the loss of product or solvent in the form of emissions. The total capital costs for existing sources are estimated to be $122 million, and the total annual costs for existing sources are estimated to be $75 million.

We estimate that in the first 3 years after the effective date of subpart FFFF that the annual cost burden will average $3,200/yr per respondent for monitoring, recordkeeping, and reporting requirements for an estimated 251 sources. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the 4th year after the effective date, existing facilities must begin to monitor and record operating parameters to comply with operating limits and prepare compliance reports, which will significantly increase the nationwide annual burden.

We expect that the actual compliance cost impacts of the proposed NESHAP will be less than described above because of the potential to use common control devices, upgrade existing control devices, implement emissions averaging, or comply with the alternative standard. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, we could not quantify the amount by which actual compliance costs will be reduced.

3. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for affected output would be 0.5 percent as a result of the proposed NESHAP for miscellaneous organic chemical manufacturers. The expected change in production of affected output is a reduction of 0.3 percent as a result of the proposed NESHAP. There is one plant closure expected out of the 207 facilities affected by the proposed NESHAP. It should be noted that the baseline economic conditions of the facility predicted to close affect the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce miscellaneous organic chemicals affected by the proposed NESHAP, such as soaps and cleaners, industrial organic chemicals, and agricultural chemicals.

4. What Are the Nonair Quality Health, Environmental, and Energy Impacts?

With the assumption that overheads from steam stripping will be recoverable as material or fuel, no solid waste is expected to be generated from steam stripping of wastewater streams. No solid waste is expected to be generated from controls of other emission points. We expect the overall energy demand (i.e., for auxiliary fuel in incinerators, electricity generation, and steam production) to increase by an estimated 8.8 million gigajoules per year (GJ/yr) (8.37 trillion British thermal units per year (Btu/yr)).

B. Miscellaneous Coating Manufacturing

1. What Are the Air Quality Impacts?

We estimated nationwide baseline HAP emissions from the Miscellaneous Coating Manufacturing source category to be 7,800 Mg/yr (8,600 tons/yr). We estimated that the proposed standards in subpart HHHHH will reduce HAP emissions by about 5,670 Mg/yr (6,250 tons/yr). Because many of the HAP emitted by miscellaneous coating manufacturing facilities are also VOC, the proposed NESHAP also will reduce VOC.

Combustion of fuels to generate electricity and steam would increase secondary emissions of CO, NO_X, SO_2, and PM_{10}. We estimate that these emissions would increase by about 34 Mg/yr (37 ton/yr). These impacts were estimated assuming electricity is generated in coal-fired power plants and steam is produced in natural gas-fired industrial boilers.

2. What Are the Cost Impacts?

The cost impacts include the capital cost to install control devices and monitoring equipment, and it includes the annual costs involved in operating control devices and monitoring equipment, implementing work practices, and conducting performance tests. The annual cost impacts also

include the cost savings generated by reducing the loss of product or solvent in the form of emissions. The total capital costs for existing sources are estimated to be $57 million, and the total annual costs for existing sources are estimated to be $16 million.

We estimate that in the first 3 years after the effective date of the proposed subpart HHHHH that the annual cost burden will average $3,500/yr per respondent for monitoring, recordkeeping, and reporting requirements for an estimated 129 sources. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the 4th year after the effective date, existing facilities must begin to monitor and record operating parameters to comply with operating limits, and they must prepare compliance reports. These activities will significantly increase the nationwide annual burden.

We expect that the actual compliance cost impacts of the proposed NESHAP will be less than described above because of the potential to use common control devices, upgrade existing control devices, implement emissions averaging, or comply with the preset temperature limits for condensers. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, we could not quantify the amount by which actual compliance costs will be reduced.

3. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for affected output would be 0.3 percent as a result of the proposed NESHAP for miscellaneous coating manufacturers. The expected change in production of affected output is a reduction of 0.1 percent as a result of the proposed NESHAP. There is one plant closure expected out of the 127 facilities affected by the proposed NESHAP. It should be noted that the baseline economic conditions of the facility predicted to close affect the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed NESHAP, such as paints, inks, and adhesives.

4. What Are the Nonair Quality Health, Environmental, and Energy Impacts?

We do not expect solid waste to be generated from controlling HAP emissions from miscellaneous coating manufacturing facilities. If a facility elects to control wastewater using a steam stripper, we expect that overheads from steam stripping will be recoverable as material or fuel, and that no solid waste would be generated. No solid waste is expected to be generated from controls of other emission points.

We expect the overall energy demand (*i.e.*, for electricity generation and steam production) to increase by an estimated 43,200 GJ/yr (41.0 billion Btu/yr).

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) 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 obligation 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, the EPA has submitted this action to OMB for review. Changes made in response to suggestions or recommendations from OMB will be documented and included in the public record.

B. Executive Order 13132, Federalism

Executive Order 13132 (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.''

Today's proposed rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because State and local governments do not own or operate any sources that would be subject to the proposed NESHAP. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed NESHAP.

C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed rules do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate miscellaneous organic chemical manufacturing process units or miscellaneous coating operations. Thus, Executive Order 13175 does not apply to these proposed rules.

D. 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

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 that EPA considered.

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. Today's proposed NESHAP are not subject to the Executive Order because they are based on technology performance, not health or safety risks. Furthermore, the proposed NESHAP have been determined not to be ''economically significant'' as defined in Executive Order 12866.

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, 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 by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 proposed NESHAP do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual costs of the Miscellaneous Organic Chemical Manufacturing and the Miscellaneous Coating Manufacturing NESHAP for any year have been estimated to be less than $75 million and $16 million, respectively. Thus, today's proposed NESHAP are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has 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. Therefore, today's proposed NESHAP are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of 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 subparts FFFF and HHHHH on small entities, small entity is defined as: (1) A small business ranging from up to 500 employees to up to 1,000 employees, depending on the NAICS code, (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. The table below presents the threshold for small businesses by NAICS code.

Category	NAICS codes	Maximum number of employees to be considered a small business
Manufacturing.	325110, 325120 325193, 325199 325212, 325221 325222, 325311	1000
	325132, 325192 325211, 325411 325412, 325611 325920	750
	325191, 325312 325314, 325320 325413, 325414 325510, 325520 325612, 325613 325620, 325910 325991, 325992 325998	500

After considering the economic impacts of today's proposed subparts FFFF and HHHHH on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the RFA, EPA conducted an assessment of the proposed standards on small businesses within the industries affected by the proposed NESHAP. Based on SBA size definitions for the affected industries and reported sales and employment data for the Miscellaneous Coating Manufacturing source category, EPA identified as small businesses 32 of the 58 companies owning affected coating manufacturing facilities. This constitutes 55 percent of the affected businesses. Although small businesses represent 55 percent of the companies within the source category, they are expected to incur 24 percent of the total industry compliance costs of $16 million. According to EPA's economic assessment, there are two small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are five small firms with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the firms affected by the proposed subpart HHHHH. The analysis shows that of the 70 facilities owned by affected small firms, one is expected to shut down after the implementation of the proposed NESHAP.

The baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model. Facilities that are already experiencing adverse economic conditions will be more severely

impacted than those that are not. Our analysis indicates that the facility predicted to close currently has low profitability levels.

As for the Miscellaneous Organic Chemical Manufacturing source category, based on SBA size definitions for the affected industries and reported sales and employment data, EPA identified as small businesses 27 of the 113 companies owning affected miscellaneous organic chemical manufacturing facilities. This constitutes 24 percent of the affected businesses. Although small businesses represent 24 percent of the companies within the source category, they are expected to incur 6 percent of the total industry compliance costs of $75 million. According to EPA's economic assessment, there is one small firm with compliance costs equal to or greater than 3 percent of their sales. In addition, there are three small firms with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the firms affected by the proposed subpart FFFF. The analysis shows that of the 49 facilities owned by affected small firms, one is expected to shut down after the implementation of the proposed NESHAP.

It should be noted that the baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model, *i.e.*, facilities which are already experiencing adverse economic conditions will be more severely impacted than those that are not, and that the facility predicted to close appears to have low profitability levels currently.

In summary, this action will affect 59 companies, out of 171 affected companies, owning coating and organic chemical manufacturing facilities as small businesses. Small firms will incur approximately $8.3 million of the total industry compliance costs of $91 million. A total of three small firms will have compliance costs equal to or greater than 3 percent of their sales, and eight small firms will have cost-to-sales ratios between 1 and 3 percent. Two facilities owned by affected small firms are expected to shut down after the implementation of this action.

Although the proposed NESHAP will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of the proposed NESHAP on small entities. We have worked closely with the National Paint and Coatings Association, the National Association of Printing Ink Manufacturers, the Adhesives and Sealants Council, the American Chemical Council, and the Synthetic Organic Chemical Manufacturers Association. These trade organizations, which represent the majority of facilities covered by these subparts, have represented their members at stakeholder meetings throughout the standards development process. We worked with the coating manufacturers to minimize the overlap of MACT standards and coordinate subpart HHHHH with MACT standards for coating applications. We worked with the small chemical manufacturers to develop a format for the process vent standard that is reasonable for the production of chemicals using batch processing in nondedicated equipment. We provide several alternative ways to comply with the standards to allow as much flexibility as possible. Emissions averaging and the pollution prevention alternative standards help those small entities that have been proactive in reducing their HAP emissions and usage, respectively. Another alternative standard requires the outlet concentration of the control device to be less than 20 ppmv. Under this alternative, recordkeeping and reporting requirements are greatly reduced. In addition, we have included in the preamble guidance for Part 70 requirements to minimize Title V permit modifications for owners and operators that make frequent changes to their processes. We continue to be interested in the potential impacts of the proposed NESHAP on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in the proposed NESHAP will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared two ICR documents (ICR Nos. 1969.01 and 1971.01), one for proposed subpart FFFF and the other for proposed subpart HHHHH, and copies may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. Copies may also be downloaded off the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

Both proposed NESHAP would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The average annual monitoring, reporting, and recordkeeping burden per respondent for these collections (averaged over the first 3 years after the effective date of the NESHAP) is estimated to be 72 labor hours per year at a cost of $3,200 for proposed subpart FFFF, and 79 labor hours per year at a cost of $3,500 for proposed subpart HHHHH. These estimates include one-time submissions of notifications and precompliance reports; preparation of a startup, shutdown, and malfunction plan with semiannual reports for any event when the procedures in the plan were not followed; preparation of semiannual compliance reports; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements for the 3-year period of the ICR are estimated at $256,000/yr for proposed subpart FFFF and $10,000/yr for proposed subpart HHHHH. Average operation and maintenance costs associated with the monitoring requirements for the 3-year period are estimated at $92,000/yr for proposed subpart FFFF and $34,000/yr for proposed subpart HHHHH.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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 through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. EPA (2822); 1200 Pennsylvania Ave., N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., 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 April 4, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by May 6, 2002. The final rule will respond to any OMB or public comment on the information requirements contained in this proposal.

H. 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.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2G, 2F, 3, 3A, 3B, 4, 15, 18, 25, 25A, 305, 316, 320, 624, 625, 1624, 1625, 8260, and 8270. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results have been documented and placed in the docket for these NESHAP (Docket A–96–04). The search for emissions monitoring procedures for measuring emissions of the HAP or surrogates subject to emission limitations in these NESHAP identified 19 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that 13 of the candidate consensus standards would not be practical due to lack of equivalency, documentation, and validation data. The 13 standards are: ASME C00031 or Performance Test Code 19–10–1981, ASTM D3154–91 (1995), ASTM D3464–96, ASTM D3796–90 (1998), ASTM D5835–95, ASTM D6060–96, ASTM E337–84 (Reapproved 1996), CAN/CSA Z2232.2–M–86, European Norm (EN) 12619 (1999), EN 1911–1,2,3 (1998), ISO 9096:1992, ISO 10396:1993, and ISO 10780:1994. Of the six remaining candidate consensus standards, the following five are under development or under EPA review: ASME/BSR MFC 12M, ASME/BSR MFC 13m, ASTM D5790–95 (1995), ISO/DIS 12039, and ISO/FDIS 14965. The EPA plans to follow, review, and consider adopting these candidate consensus standards after their development and further review by EPA is completed.

One 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 these NESHAP in addition to the currently available EPA Method 18 codified at 40 CFR part 60, appendix A. 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 (Docket A–96–04) is a suitable alternative to Method 18 where the target compound(s) are those listed in Section 1.1 of ASTM D6420–99 (Docket citation of table); and the target concentration is between 150 ppb(v) and 100 ppm(v).

For target compound(s) 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.

As a result, EPA proposes to incorporate by reference (IBR) ASTM 6420–99 into 40 CFR 63.14 for application with these subparts FFFF and HHHHH of part 63. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of other GC configurations.

The EPA takes comment on proposed compliance demonstration requirements proposed in this proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation 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 (for other than Method 301, 40 CFR part 63, appendix A, was used).

Table 9 of the proposed subpart FFFF and Table 8 of the proposed subpart HHHHH list the EPA testing methods and performance standards included in the proposed regulations. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f), the proposal also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the proposed NESHAP.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

These rules are not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because they are not significant regulatory actions under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 20, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart FFFF to read as follows:

Subpart FFFF—National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing

Sec.

Subpart FFFF—National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing

What this Subpart Covers

§ 63.2430 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.2435 Am I subject to the requirements in this subpart?

(a) You are subject to the requirements in this subpart if you own or operate miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source of hazardous air pollutants (HAP) emissions as defined in section 112(a) of the Clean Air Act (CAA).

(b) An MCPU includes equipment necessary to operate a miscellaneous organic chemical manufacturing process, as defined in § 63.2550, that satisfies all of the conditions specified in paragraphs (b)(1) through (3) of this section. An MCPU also includes any associated storage tanks for feedstocks and recovered solvents; equipment in open systems that is used to convey or store water having the same concentration and flow characteristics as wastewater; and components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are used to manufacture any material or family of materials described in paragraphs (b)(1)(i) through (v) of this section. You must assign

storage tanks to the MCPU according to the provisions contained in § 63.2440(c).

(1) The material or family of materials is described in paragraph (b)(1)(i), (ii), (iii), (iv), or (v) of this section.

(i) An organic chemical or chemicals classified in SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in paragraph (c)(3) of this section.

(ii) An organic chemical or chemicals classified in NAICS Code 3251, 3252, 3253, 3254, 3255, 3256, or 3259, except for NAICS Codes 325351 and 325181 and as provided in paragraph (c)(3) of this section.

(iii) Quaternary ammonium compounds and ammonium sulfate produced with caprolactam.

(iv) Hydrazine.

(v) Organic solvents recovered using nondedicated solvent recovery devices.

(2) It processes, uses, or produces HAP.

(3) Except for process vents from batch operations within a chemical manufacturing process unit (CMPU), as identified in § 63.100(j)(4), it is not part of an affected source under another subpart of this part 63. For this situation, the MCPU is the same as the CMPU as defined in § 63.100. For these MCPU, you are subject only to the requirements for batch process vents in this subpart.

(c) The requirements in this subpart do not apply to the operations specified in paragraphs (c)(1), (2), and (3) of this section.

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA.

(2) Any MCPU that manufactures ammonium sulfate as a by-product, if the slurry entering the by-product manufacturing process contains 50 parts per million by weight (ppmw) HAP or less (or 10 ppmw benzene or less). You must retain information, data, and analysis to document the HAP concentration in the entering slurry in order to claim this exemption.

(3) The production of coatings including, but not limited to, inks, paints, and adhesives that are manufactured solely by mixing and that are part of an affected source under subpart HHHHH of this part 63.

§ 63.2440 What parts of my plant do the requirements in this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing miscellaneous organic chemical manufacturing affected source.

(b) The miscellaneous organic chemical manufacturing affected source is the facilitywide collection of MCPU and associated ancillary equipment such as heat exchange systems, waste water and waste management units, and transfer operations that are associated with manufacturing materials described in § 63.2435(b)(1).

(c) You must consider storage tanks to be part of the MCPU if either the input to the storage tank from the miscellaneous organic chemical manufacturing process (either directly or through other storage tanks assigned to the MCPU) is greater than or equal to the input from any other process, or the output from the storage tank to the miscellaneous organic chemical manufacturing process (either directly or through other storage tanks assigned to the MCPU) is greater than or equal to the output to any other process. If the greatest input to and/or output from a shared storage tank is the same for two or more processes, including at least one miscellaneous organic chemical manufacturing process, you may assign the storage tank to any process unit that has the greatest input or output. If the use varies from year to year, then you must base the determination on the utilization that occurred during the year preceding [date of publication of final rule] or, if the storage tank was not in operation during that year, you must base the use on the expected use for the first 5-year period after startup. You must include the determination in the Notification of Compliance Status specified in § 63.2515(e).

(d) An affected source is a new affected source if you commenced construction of the affected source after April 4, 2002, and you meet the applicability criteria at the time you commenced construction.

(e) An MCPU dedicated to manufacturing a single material (or concurrent production of multiple materials) is a new affected source if the MCPU has the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP, and you commenced construction of the MCPU after April 4, 2002.

(f) An affected source is reconstructed if you commenced reconstruction as defined in § 63.2 after April 4, 2002, except that the phrase ''affected or previously unaffected stationary source'' in § 63.2 shall mean ''affected source'' for the purposes of this subpart.

(g) An MCPU that is a major source in and by itself and is dedicated to manufacturing a single material (or concurrent production of multiple materials) is reconstructed if you commenced reconstruction as defined in § 63.2 after April 4, 2002, except that the phrase ''affected or previously unaffected stationary source'' in § 63.2 means ''MCPU'' for the purposes of this subpart.

(h) An MCPU that is also a CMPU under § 63.100 is reconstructed for the purposes of this subpart if, and only if, the CMPU meets the requirements for reconstruction in § 63.100(l)(2).

(i) An affected source is existing if it is not new or reconstructed.

§ 63.2445 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you startup your new or reconstructed affected source before the effective date of this subpart, then you must comply with the requirements for new and reconstructed sources in this subpart no later than the effective date of the subpart.

(2) If you startup your new or reconstructed affected source after the effective date of this subpart, then you must comply with the requirements for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source on the effective date, you must comply with the requirements for existing sources in this subpart no later than the date 3 years after the effective date of this subpart. If you add equipment to your existing affected source after the effective date and before the date 3 years after the effective date, you must comply with the requirements for existing sources in this subpart no later than the date 3 years after the effective date of this subpart for the added equipment.

(c) If you add equipment to your existing affected source after the date 3 years after the effective date, you must comply with the requirements for existing sources in this subpart upon startup of the added equipment.

(d) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must comply with the requirements in paragraphs (d)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a reconstructed source must be in compliance with the requirements for new and reconstructed sources in this subpart upon startup.

(2) All other parts of the source must be in compliance with the requirements for existing sources in this subpart by the date 1 year after the date the area source becomes a major source.

(e) You must meet the notification requirements in § 63.2515 according to the schedule in § 63.2515 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations and work practice standards in this subpart.

Emission Limitations and Work Practice Standards

§ 63.2450 What emission limitations and work practice standards must I meet?

(a) You must meet each emission limitation and work practice standard in Tables 1 through 7 of this subpart that applies to you as specified in paragraphs (a)(1) through (7) of this section.

(1) Table 1 of this subpart specifies emission limitations and work practice standards for continuous process vents.

(2) Table 2 of this subpart specifies emission limitations and work practice standards for batch process vents.

(3) Table 3 of this subpart specifies emission limitations and work practice standards for wastewater streams, waste management units, and liquid streams in open systems within an MCPU.

(4) Table 4 of this subpart specifies emission limitations and work practice standards for storage tanks.

(5) Table 5 of this subpart specifies work practice standards for equipment leaks, closed-vent systems, and heat exchange systems.

(6) Table 6 of this subpart specifies emission limitations and work practice standards for transfer operations.

(7) Table 7 of this subpart specifies emission limitations for halogenated vent streams that are controlled with a combustion device.

(b) You must determine the total resource effectiveness value for each continuous process vent using the procedures described in § 63.2460(a).

(c) If an emission stream contains halogen atoms, you must determine whether it meets the definition of a halogenated stream using the procedures specified in § 63.2460(b).

(d) You must either designate a wastewater stream as an affected wastewater stream or determine that it is an affected wastewater stream using the procedures specified in § 63.2460(c).

(e) You must meet each operating limit for control devices, recovery devices, and wastewater treatment units in Table 8 of this subpart that applies to you.

(f) All emission limitations, operating limits, and work practice standards in Tables 1 through 8 of this subpart apply to new, reconstructed, and existing sources, unless limited to specific sources within the tables.

(g) As provided in § 63.6(g), you may apply to EPA for approval to use an alternative to an emission limitation or work practice standard in Tables 1 through 8 of this subpart.

(h) Opening of a safety device, as defined in § 63.2550, is allowed at any time conditions require to avoid unsafe conditions.

(i) The emission limitations in Table 4 of this subpart for control devices used to control emissions from storage tanks do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limitation specified in Table 4 of this subpart, must not exceed 240 hours per year.

General Compliance Requirements

§ 63.2455 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(1) During the period, if any, between the compliance date specified for your affected source in § 63.2445 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(2) [Reserved].

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) If you use a boiler or process heater to comply with an emission limitation, then the vent stream must be introduced into the flame zone of the boiler or process heater.

(e) After you treat an affected wastewater stream or residual removed from an affected wastewater stream, it is no longer subject to this subpart.

(f) You are not required to conduct a performance test or design evaluation when you use any of the units specified in paragraphs (f)(1) through (4) of this section to meet emission limitations specified in § 63.2450. You also are exempt from the continuous compliance, recordkeeping, and reporting requirements specified in §§ 63.2485 through 63.2530 for any of these units. This exemption applies to units used as control devices or wastewater treatment units.

(1) A hazardous waste incinerator that has been issued a final permit under 40 CFR part 270 and that complies with the requirements of 40 CFR part 264, subpart O, or that has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater;

(3) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel; or

(4) A boiler or process heater burning hazardous waste that meets the requirements in paragraph (f)(4)(i) or (ii) of this section:

(i) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(g) When this subpart requires the use of a control device, you may use either a single control device or any combination of control devices.

Testing and Initial Compliance Requirements

§ 63.2460 How do I determine whether vent streams and wastewater streams meet the applicability criteria?

(a) *Determine affected continuous process vents.* For each continuous process vent from an MCPU, you must determine the total resource effectiveness (TRE) index value as specified in § 63.115(d), except as specified in paragraphs (a)(1) and (2) of this section.

(1) When a TRE index value of 4.0 is referred to in § 63.115(d), TRE index values of 2.6 for existing sources and 5.0 for new and reconstructed sources apply for the purposes of this subpart.

(2) When § 63.115(d) refers to ''emission reductions specified in § 63.113(a),'' the emission limitations and work practice standards specified in Table 1 of this subpart apply for the purposes of this subpart.

(b) *Determine halogenated vent streams.* To determine whether an emission stream from a process vent, waste management unit, or transfer operation is halogenated, you must calculate the halogen atom levels as

specified in paragraphs (b)(1) and (2) of this section.

(1) For continuous process vents, calculate the mass emission rate of halogen atoms contained in the organic compounds according to the procedures in § 63.115(d)(2)(v).

(2) For emission streams from batch process vents, waste management units, and transfer operations, calculate the concentration of each organic compound containing halogen atoms in accordance with § 63.115(d)(2)(v)(A), multiply each concentration by the applicable number of halogen atoms in the organic compound, and sum the resulting halogen atom concentrations associated with each organic compound.

(c) *Determine affected wastewater streams.* For each wastewater stream that you generate, you must either designate the wastewater stream as an affected wastewater stream according to the procedures in paragraph (c)(1) of this section, or you must determine whether the wastewater stream is an affected wastewater stream according to the procedures in paragraph (c)(2) of this section. Each affected wastewater stream is subject to the requirements in Table 3 of this subpart.

(1) You may designate any wastewater stream to be an affected wastewater stream. You do not have to determine the concentration or flow rate for any designated affected wastewater stream.

(2) For wastewater streams that you do not designate as affected wastewater streams, you must use the procedures specified in § 63.144(b) and (c) to establish the concentrations and flow rates, except as specified in paragraphs (c)(2)(i) and (ii) of this section.

(i) The phrase ''Group 1 wastewater stream'' in § 63.144 means ''affected wastewater stream'' for the purposes of this subpart.

(ii) The phrase ''Group 2 wastewater stream'' means any wastewater stream that is not an affected wastewater stream for the purposes of this subpart.

§ 63.2465 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) If you have an existing affected source on the effective date of this subpart, you must conduct all initial compliance demonstrations required in Tables 10 through 16 of this subpart that apply to you prior to the date 3 years after the effective date.

(b) If you have a new affected source or a reconstructed source, you must conduct all initial compliance demonstrations required in Tables 10 through 16 of this subpart that apply to you no later than 180 calendar days after the applicable compliance date specified in § 63.2445(a). You must also comply with § 63.7(a)(2) for performance tests.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source, you must conduct all initial compliance demonstrations required in Tables 10 through 16 of this subpart that apply to you in accordance with the schedule specified in paragraphs (c)(1) and (2) of this section.

(1) For those parts of the source that are an existing affected source, you must conduct all initial compliance demonstrations prior to the date 1 year after the area source becomes a major source.

(2) For those parts of the source that are a new affected source or reconstructed source, you must conduct all initial compliance demonstrations no later than 180 calendar days after startup. You must also comply with § 63.7(a)(2) for performance tests.

(d) You must conduct a subsequent performance test or compliance demonstration equivalent to an initial compliance demonstration within 180 days of a change in the worst-case conditions.

§ 63.2470 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct each performance test, design evaluation, and other procedure specified in Tables 10 through 16 of this subpart that applies to you.

(b) When you are required to calculate uncontrolled emissions from batch vents according to § 63.1257(d)(2)(i), use any applicable option except you may not calculate emissions from heating using Equation 13 of subpart GGG of this part, or emissions from depressurization using the procedures in § 63.1257(d)(2)(i)(C)(*1*) through (*4*).

(c) *Requirements for performance tests.* Each performance test must be conducted according to the requirements in § 63.7(e)(1), except that performance tests for HAP from batch process vents must be conducted according to paragraph (c)(3) of this section and not under normal operating conditions as specified in § 63.7(e)(1). Performance tests also must be conducted using the methods and procedures specified in Table 9 of this subpart and in paragraphs (c)(1) through (15) of this section.

(1) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) When you conduct a performance test for a control device used to control emissions from continuous process vents, you must conduct the test according to § 63.997.

(3) When you conduct a performance test for a control device used to control emissions from batch process vents, you must conduct the test according to § 63.1257(b)(8).

(4) When you conduct a performance test for a wastewater treatment unit or control device, you must conduct the test according to § 63.145.

(5) You do not have to conduct a performance test for any condenser, but you must have the results of continuous direct measurement of the condenser outlet gas temperature to be used in determining concentrations as part of the design evaluation specified in paragraph (d) of this section.

(6) If you elect to use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in § 63.14), to measure the percent reduction of HAP as specified in Table 9 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(6)(i) through (iii) of this section.

(i) 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 combustion device. If the performance test is for a combustion control device, you must first determine which HAP 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 HAP present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

(ii) Calculate the concentration and emission rate of total organic HAP (E_{HAP}) in the inlet and outlet vent streams using the equations in §§ 63.115(c)(3)(ii) and 63.116(c)(4)(ii).

(iii) Calculate the percent reduction in total organic HAP using the equation in § 63.116(c)(4)(iii).

(7) If you elect to use Method 25A of 40 CFR part 60, appendix A, to determine the percent reduction efficiency of a vent stream controlled in a noncombusion device as specified in Table 9 of this subpart, you must conduct the performance test in accordance with paragraphs (c)(7)(i) through (iv) of this section.

(i) Calibrate the instrument on the predominant HAP.

(ii) The 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.

(iii) Calculate the inlet and outlet concentrations of Total Organic Compound (TOC) per Section 8 of Method 25A. Calculate the emission rate of TOC (E_{TOC}) in the inlet and outlet vent streams using the equation in § 63.116(c)(4)(ii).

(iv) Calculate the percent reduction in TOC using the equation in § 63.116(c)(4)(iii).

(8) If you elect to use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in § 63.14), to measure the total concentration of HAP at the outlet of the control device, as specified in Table 9 of this subpart, you must conduct the performance test using procedures in paragraphs (c)(8)(i) and (ii) of this section.

(i) For a combustion control device, you must first determine which HAP 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 HAP compounds present at the inlet of the control device.

(ii) The total HAP concentration (C_{HAP}) is the sum of the concentrations of the individual HAP components and must be computed for each run using the equation in § 63.115(c)(3)(ii).

(9) If you elect to use Method 25A of 40 CFR part 60, appendix A, to measure the TOC concentration of the outlet vent stream as specified in Table 9 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(9)(i) through (iii) of this section.

(i) Calibrate the instrument on the predominant HAP.

(ii) Conduct the performance test in accordance with paragraphs (c)(9)(ii)(A) and (B) of this section as follows:

(A) The 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; and

(B) The span value of the analyzer must be less than 100 parts per million by volume (ppmv).

(iii) Report the results as carbon, calculated according to equation 25A–1 of Method 25A.

(10) If you elect to use Method 25 of 40 CFR part 60, appendix A, to determine the percent reduction of TOC of a vent stream controlled in a combustion device as specified in Table 9 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(10)(i) through (iii) of this section.

(i) Measure the total gaseous non-methane organic (TGNMO) concentration of the inlet and outlet vent streams using the procedures of Method 25, except that you may use Method 25A in lieu of Method 25 if the condition in either paragraph (c)(10)(i)(A) or (B) of this section is met.

(A) The concentration at the inlet to the control system and the required level of control are such to result in exhaust TGNMO concentrations of 50 ppmv or less.

(B) Because of the high efficiency of the control device, the anticipated TGNMO concentration at the control device exhaust is 50 ppmv or less, regardless of the inlet concentration.

(ii) Using the TGNMO concentration from Method 25 or the TOC concentration from method 25A, calculate the emission rate of TOC (E_{TOC}) in the inlet and outlet vent streams according to paragraph (c)(7)(iii) of this section.

(iii) Calculate the percent reduction in TOC according to paragraph (c)(7)(iv) of this section.

(11) You must use Method 26 in appendix A to part 60 to measure hydrogen halide and halogen concentrations as specified in Table 9 of this subpart, and you must conduct the performance test using the procedures in paragraphs (c)(11)(i) and (ii) of this section.

(i) Use a minimum sampling time of 1 hour.

(ii) Use Method 26A in lieu of Method 26 when measuring emissions at the outlet of a scrubber where the potential for mist carryover exists.

(12) If the uncontrolled or inlet gas stream to the control device contains formaldehyde, you must conduct emissions testing according to paragraph (c)(12)(i) or (ii) of this section.

(i) If you elect to comply with any of the percent reduction emission limitations in Tables 1 through 6, and formaldehyde is the principal HAP component (i.e., greater than 50 percent of the HAP in the stream by volume), than you must use method 316 or Method 320 (40 CFR part 63, appendix A) 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 HAP emissions.

(ii) If you elect to comply with any of the outlet TOC concentration limitations in Tables 1 through 6 of this subpart, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (volume concentration) formaldehyde, you must use Method 316 or Method 320 (40 CFR part 63, appendix A) to separately determine the formaldehyde concentration. Calculate the total HAP or TOC emissions by totaling the formaldehyde emissions measured using Method 316 or 320 and the other HAP emissions measured using Method 18 or 25/25A according to Table 9 of this subpart.

(13) If the uncontrolled or inlet gas stream to the control device contains carbon disulfide, you must conduct emissions testing according to paragraphs (c)(13)(i) or (ii) of this section.

(i) If you elect to comply with any of the percent reduction emission limitations in Tables 1 through 6 of this subpart, and carbon disulfide is the principal HAP component (i.e., greater than 50 percent of the HAP in the stream by volume), then you must use Method 18 or Method 15 (40 CFR part 60, appendix A) to measure carbon disulfide at the inlet and outlet of the control device. Use the percent reduction in carbon disulfide as a surrogate for the percent reduction in total HAP emissions.

(ii) If you elect to comply with any of the outlet TOC concentration limitations in Table 1 through 6 of this subpart, and the uncontrolled or inlet gas stream to the control device contains greater than 10 percent (volume concentration) carbon disulfide, you must use Method 18 or Method 15 to separately determine the carbon disulfide concentration. Calculate the total HAP or TOC emissions by totaling the formaldehyde emissions measured using Method 18 or 15 and the other HAP emissions measured using Method 18 or 25/25A according to Table 9 of this subpart.

(14) 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, under the conditions specified in paragraphs (c)(14)(i) through (iii) of this section.

(i) If the target compound(s) is listed in Section 1.1 of ASTM D6420–99 and the target concentration is between 150 parts per billion by volume and 100 ppmv.

(ii) If the target compound(s) is not listed in Section 1.1 of ASTM D6420–99, but is potentially detected by mass spectrometry, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, met, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

(iii) If a minimum of one sample/analysis cycle is completed at least every 15 minutes.

(15) Three test runs are required for each performance test.

(d) *Design evaluation.* When you conduct a design evaluation, you must follow the procedures in § 63.1257(a)(1). The design evaluation must also include the value(s) and basis for the operating limit(s) to be monitored as specified in Table 8 of this subpart.

(e) *Establishing operating limits during performance tests.* During the period of each performance test conducted according to paragraphs (c)(2) and (3) of this section for any type of control device listed in Table 8 of this subpart, you must collect operating parameter monitoring system data, average the operating parameter data over the test period, determine the operating limit(s) to be monitored for that control device, and set limits according to paragraphs (e)(1) and (2) of this section. You may also elect to establish additional operating limit(s) for conditions other than those under which the performance test was conducted as specified in paragraph (e)(3) of this section.

(1) If the operating limit to be established is a maximum, it must be based on the average of the values for each of the three test runs.

(2) If the operating limit to be established is a minimum, it must be based on the average of the values for each of the three test runs.

(3) If you elect to establish additional operating limits, you must comply with the requirements specified in paragraph (e)(3)(i) of this section and, if applicable, paragraph (e)(3)(ii) of this section.

(i) The additional operating limits may be based on the results of the performance test and supplementary information such as engineering assessments and manufacturer's recommendations. These limits may be established for conditions as unique as individual emission episodes for a batch process. You must provide rationale in the precompliance report for the specific level for each operating limit, including any data and calculations used to develop the limit and a description of why the limit indicates proper operation of the control device. The procedures provided in this paragraph (e)(3)(i) have not been approved by the Administrator and determination of the operating limit using these procedures is subject to review and approval by the Administrator.

(ii) If you elect to establish separate monitoring levels for different emission episodes within a batch process, you must maintain records in your daily schedule or log of processes indicating each point at which you change from one operating limit to another, even if the duration of the monitoring for an operating limit is less than 15 minutes. You must maintain a daily schedule or log of processes according to § 63.2525(a)(5).

(f) *Periodic verification.* For a control device with total inlet HAP emissions less than 1 ton/yr, you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (i.e., daily or block, as defined in § 63.2475(a)(5) or (b)(3)) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 ton/yr as specified in Table 8 of this subpart. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(g) *Outlet concentration correction for supplemental gases.* (1) *Combustion Devices.* If you use a combustion device to comply with an outlet concentration emission limitation, you must correct the actual TOC, organic HAP, and hydrogen halide and halogen concentrations to 3 percent oxygen if you add supplemental gases, as defined in § 63.2550, to the vent stream or manifold. You must use the integrated sampling and analysis procedures of Method 3A or 3B of 40 CFR part 60, appendix A, to determine the actual oxygen concentration ($\%0_{2d}$). You must take samples during the same time that you take the TOC or total organic HAP or hydrogen halides and halogen samples. Use Equation 1 of this section to correct the concentration to 3 percent oxygen (Cc):

$$C_c = C_m \left(\frac{17.9}{20.9 - \%O_{2d}} \right) \qquad \text{(Eq. 1)}$$

Where:

C_c = concentration of TOC or total organic HAP or hydrogen halide and halogen corrected to 3 percent oxygen, dry basis, ppmv;

C_m = total concentration of TOC or total organic HAP or hydrogen halide and halogen in vented gas stream, average of samples, dry basis, ppmv;

$\%0_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(2) *Noncombustion devices.* If you use a control device other than a combustion device to comply with a TOC, organic HAP, or hydrogen halide outlet concentration emission limitation, you must correct the actual concentration for supplemental gases using Equation 2 of this section; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas:

$$C_a = C_m \left(\frac{Q_s + Q_a}{Q_a} \right) \qquad \text{(Eq. 2)}$$

Where:

C_a = corrected outlet TOC, organic HAP, and hydrogen halides and halogens concentration, dry basis, ppmv;

C_m = actual TOC, organic HAP, and hydrogen halides and halogens concentration measured at control device outlet, dry basis, ppmv;

Q_a = total volumetric flow rate of all gas streams vented to the control device, except supplemental gases;

Q_s = total volumetric flow rate of supplemental gases.

(h) *Combination of batch vents with other vents.* If other vents are manifolded with batch process vents, you must demonstrate initial compliance for the other vents either as part of the initial compliance demonstration for the batch vents, or you must conduct multiple demonstrations (one for the batch vents, and one or more for the other vents).

§ 63.2475 What are my monitoring device installation, operation, and maintenance requirements?

(a) Each continuous emissions monitoring system (CEMS) must be installed, operated, and maintained according to the requirements in paragraphs (a)(1) through (6) of this section.

(1) Each CEMS must be installed, operated, and maintained according to the applicable Performance Specification of 40 CFR part 60, appendix B, and according to paragraph

(a)(2) of this section, except as specified in paragraph (a)(1)(i) of this section. For any CEMS meeting Performance Specification 8, you must also comply with appendix F, procedure 1 of 40 CFR part 60.

(i) If you wish to use a CEMS other than an Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 to measure hydrochloric acid (HCl) before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(ii) [Reserved].

(2) You must determine the calibration gases and reporting units for TOC CEMS in accordance with paragraph (a)(2)(i), (ii), or (iii) of this section.

(i) For CEMS meeting Performance Specification 9 or 15 requirements, determine the target analyte(s) for calibration using either process knowledge of the control device inlet stream or the screening procedures of Method 18 on the control device inlet stream.

(ii) For CEMS meeting Performance Specification 8 used to monitor performance of a combustion device, calibrate the instrument on the predominant HAP and report the results as carbon (C_1), and use Method 25A or any approved alternative as the reference method for the relative accuracy tests.

(iii) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant HAP using either process knowledge or the screening procedures of Method 18 on the control device inlet stream, calibrate the monitor on the predominant HAP, and report the results as C_1. Use Method 18, ASTM D6420–99, or any approved alternative as the reference method for the relative accuracy tests, and report the results as C_1.

(3) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B, except as specified in paragraph (a)(3)(i) of this section.

(i) If you have an existing source, the requirement in § 63.8(e)(4) to conduct the performance evaluation not later than 180 days after the compliance date does not apply for the purposes of this subpart. In this situation, you must conduct the performance evaluation for the CEMS prior to the compliance date, and you must submit the results to the Administrator in the Notification of Compliance Status.

(ii) [Reserved].

(4) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) The CEMS data must be reduced to operating day or operating block averages computed using valid data from at least 75 percent of the hours during the averaging period. To have a valid hour of data, you must have four or more data points equally spaced over the 1-hour period (or at least two data points during an hour when calibration, quality assurance, or maintenance activities are being performed). An operating block is a period of time from the beginning to end of a batch process. Operating block averages may be used only for batch processes.

(6) If you add supplemental gases, you must correct the measured concentrations in accordance with § 63.2470(g).

(b) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) Have valid data from at least 75 percent of the hours during the averaging period.

(3) Determine the average of all recorded readings associated with each operating limit for each operating day or operating block. An operating block is a period of time that is equal to the time from the beginning to end of a batch process. Operating block averages may be used only for batch processes.

(4) Record the results of each inspection, calibration, and validation check.

(c) For each temperature monitoring device, you must meet the requirements in paragraphs (b) and (c)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) 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.

(3) 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.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11°C.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must 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.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(d) For each flow measurement device, you must meet the requirements in paragraphs (b) and (d)(1) through (5) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semiannually.

(5) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pressure measurement device, you must meet the requirements in paragraphs (b) and (e)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) 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.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(f) For each pH measurement device, you must meet the requirements in paragraphs (b) and (f)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(g) If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

§ 63.2480 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to Tables 10 through 16 of this subpart.

(b) You must establish each site-specific operating limit in Table 8 of this subpart that applies to you according to the requirements in § 63.2470(d), (e), or (f).

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.2515(e).

Continuous Compliance Requirements

§ 63.2485 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You must not use data recorded during monitoring malfunctions, associated repairs, required quality assurance or control activities, and periods of no flow in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement. You must use all of the data you collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.2490 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation and work practice standard in Tables 1 through 8 of this subpart that applies to you according to methods specified in Tables 17, 18, and 19 of this subpart.

(b) You must report each instance in which you did not meet each emission limitation and each operating limit in Tables 17 and 18 of this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the requirements in Table 19 of this subpart that apply to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.2520.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Alternative Means of Compliance

§ 63.2495 How do I comply with the pollution prevention standard?

(a) If you have an existing affected source, you may elect to comply with the pollution prevention alternative requirements specified in paragraphs (a)(1) and (2) of this section in lieu of the emission limitations and work practice standards contained in Tables 2 through 5 of this subpart for any MCPU.

(1) You must reduce the production-indexed HAP consumption factor (HAP factor) by at least 65 percent from a 3-year average baseline beginning no earlier than the 1994 through 1996 calendar years. Alternatively, for a process that has been operating for less than 3 years but more than 1 year, you may calculate the baseline factor for the time period from startup of the process until the present. For any reduction in the HAP factor that you achieve by reducing HAP that are also volatile organic compounds (VOC), you must demonstrate an equivalent reduction in the production-indexed VOC consumption factor (VOC factor) on a mass basis. For any reduction in the HAP factor that you achieve by reducing a HAP that is not a VOC, you may not increase the VOC factor.

(2) You may comply with the requirements of paragraph (a)(1) of this section for a series of processes, including situations where multiple processes are merged, if you demonstrate to the satisfaction of the Administrator that the multiple processes were merged after the baseline period into an existing process or processes.

(b) *Exclusions.* (1) You must comply with the emission limitations and work practice standards contained in Tables 2 through 5 of this subpart for all HAP that are generated in the MCPU and that are not part of the HAP factor. Hydrogen halides that are generated as a result of combustion control must be controlled according to the requirements of Table 7 of this subpart.

(2) You may not merge nondedicated formulation or nondedicated solvent recovery processes with any other processes.

(3) You may not comply with paragraph (a) of this section for transfer operations that are subject to the emission limitations and work practice standards in Table 6 of this subpart.

(c) *Initial compliance procedures.* To demonstrate initial compliance with paragraph (a) of this section, you must prepare a demonstration summary in accordance with paragraph (c)(1) of this section and calculate baseline and target annual HAP and VOC factors in accordance with paragraphs (c)(2) and (3) of this section.

(1) *Demonstration summary.* You must prepare a pollution prevention demonstration summary that contains, at a minimum, the information in paragraphs (c)(1)(i) through (iii) of this section for each MCPU for which you comply with paragraph (a) of this section. You must include the demonstration summary in the Precompliance report required in Table 20 of this subpart and § 63.2520(c).

(i) Descriptions of the methodologies and forms used to measure and record consumption of HAP and VOC compounds.

(ii) Descriptions of the methodologies and forms used to measure and record production of the product(s).

(iii) Supporting documentation for the descriptions provided in accordance with paragraphs (c)(1)(i) and (ii) of this

section including, but not limited to, operator log sheets and copies of daily, monthly, and annual inventories of materials and products. You must show how this documentation will be used to calculate the annual factors required in paragraph (d) of this section.

(2) *Baseline factors.* You must calculate baseline HAP and VOC factors by dividing the consumption of total HAP and total VOC by the production rate, per process, for the first 3-year period in which the process was operational, beginning no earlier than the period consisting of the 1994 through 1996 calendar years. Alternatively, for a process that has been operational for less than 3 years, but more than 1 year, the baseline factors must be established for the time period from startup of the process until April 4, 2002.

(3) *Target annual factors.* You must calculate a target annual HAP factor that is equal to or less than 35 percent of the baseline HAP factor. For each reduction in a HAP that is also a VOC, you must calculate a target annual VOC factor that is lower than the baseline VOC factor by an equivalent amount on a mass basis. For each reduction in a HAP that is not a VOC, the target annual VOC factor must be equal to or less than the baseline VOC factor.

(d) *Continuous compliance requirements.* You must calculate annual rolling average values of the HAP and VOC factors (annual factors) in accordance with the procedures specified in paragraphs (d)(1) through (3) of this section. To show continuous compliance, the annual factors must be equal to or less than the target annual factors calculated according to paragraph (c)(3) of this section.

(1) To calculate the annual factors, you must divide the consumption of both total HAP and total VOC by the production rate, per process, for 12-month periods at the frequency specified in either paragraph (d)(2) or (3) of this section, as applicable.

(2) For continuous processes, you must calculate the annual factors every 30 days for the 12-month period preceding the 30th day (*i.e.,* annual rolling average calculated every 30 days). A process with both batch and continuous operations is considered a continuous process for the purposes of this section.

(3) For batch processes, you must calculate the annual factors every 10 batches for the 12-month period preceding the 10th batch (*i.e.,* annual rolling average calculated every 10 batches), except as specified in paragraphs (d)(3)(i) and (ii) of this section.

(i) If you produce more than 10 batches during a month, you must calculate the annual factors at least once during that month.

(ii) If you produce less than 10 batches in a 12-month period, you must calculate the annual factors for the number of batches in the 12-month period since the previous calculations.

(e) *Records.* You must keep records of HAP and VOC consumption, production, and the rolling annual HAP and VOC factors for each MCPU for which you are complying with paragraph (a) of this section.

(f) *Reporting.* (1) You must include the pollution-prevention demonstration summary in the Precompliance report required by Table 20 of this subpart and § 63.2520(c).

(2) You must identify all days when the annual factors were above the target factors in the compliance reports.

§ 63.2500 How do I comply with emissions averaging?

(a) For an existing source, you may elect to comply with the percent reduction emission limitations in Tables 1 through 4 of this subpart by complying with the emissions averaging provisions according to paragraphs (b) through (e) of this section for groups of as many as 40 emission points. Each batch process represents one emission point for the purposes of emissions averaging.

(b) *Exclusions.* You may not include the emission points specified in paragraphs (b)(1) through (7) of this section in an emissions average.

(1) Any emission points for which State authorities prohibit the use of emissions averaging and require compliance with the emission limitations and work practice standards in Tables 1 through 4 of this subpart.

(2) Emission points that are controlled as specified in paragraphs (b)(2)(i) through (iv) may not be used to calculate emissions averaging credits, unless a nominal efficiency has been assigned according to the procedures in § 63.150(i). The nominal efficiency must exceed the percent reduction required by Tables 1 through 4 of this subpart.

(i) Affected storage tanks controlled with an internal floating roof meeting the specifications of § 63.1063(a)(1)(i), or an external floating roof meeting the specifications of § 63.1063(a)(1)(ii).

(ii) Emission points controlled with a flare.

(iii) Waste management units controlled as specified in §§ 63.133 through 63.137.

(iv) Wastewater treated in a steam stripper meeting the specifications in § 63.138(d).

(3) Emission streams controlled to an outlet concentration less than or equal to 20 ppmv may not be used in any averaging group.

(4) Maintenance wastewater streams and wastewater streams treated in biological treatment units may not be included in any averaging group.

(5) Processes which have been permanently shut down and storage tanks permanently taken out of HAP service may not be included in any averaging group.

(6) Emission points already controlled on or before November 15, 1990 may not be used to generate emissions averaging credits, unless the level of control has been increased after November 15, 1990. In these cases, credit will be allowed only for the increase in control after November 15, 1990.

(7) Emission points controlled to comply with a State or Federal rule other than this subpart may not be included in an emissions averaging group, unless the level of control has been increased after November 15, 1990, above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the point is subsequently made subject to a State or Federal rule other than this subpart, the point can continue to generate emissions averaging credit for the purpose of complying with the previously approved average.

(c) *Compliance procedures.* To demonstrate compliance with the emissions averaging provisions, you must comply with the requirements of paragraphs (c)(1) through (7) of this section.

(1) *Emissions averaging plan.* You must develop and submit for approval an emissions averaging plan according to paragraphs (c)(1)(i) through (vi) of this section.

(i) The emissions averaging plan must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the permitting authority, greater risk to human health or the environment than if the emission points were controlled according to Tables 1 through 4 of this subpart.

(ii) The demonstration of hazard or risk equivalency must be made to the satisfaction of the operating permit authority, and we may require you to use specific methodologies and procedures such as any guidance that

we prepare or any other technically sound information or methods.

(iii) An emissions averaging plan that does not demonstrate hazard or risk equivalency to our satisfaction will not be approved. We may require such adjustments to the emissions averaging plan as are necessary in order to ensure that the average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to the emission limitations and work practice standards in Tables 1 through 4 of this subpart.

(iv) A hazard or risk equivalency demonstration must satisfy the requirements specified in paragraphs (c)(1)(iv)(A) through (C) of this section.

(A) Be a quantitative, comparative chemical hazard or risk assessment.

(B) Account for differences between averaging and nonaveraging options in chemical hazard or risk to human health or the environment.

(C) Meet any requirements we set for such demonstrations.

(v) For all emission points included in emissions averaging, the emissions averaging plan must include the information listed in paragraphs (c)(1)(v)(A) through (E) of this section.

(A) The identification of all emission points in each emissions average.

(B) The uncontrolled and controlled HAP emissions for all of the emission points included to calculate the debits and credits in paragraphs (c)(5) and (6) of this section.

(C) The debit and credit calculations.

(D) The estimated values for all operating limits set according to § 63.2470(d), (e), or (f) and Table 8 of this subpart for each emission point included in the averages.

(E) A statement that the initial and continuous compliance demonstrations and associated reporting and recordkeeping in this section for each emission point in the averages will be implemented beginning on the compliance date.

(vi) You must submit the emissions averaging plan no later than 18 months prior to the compliance date of this subpart. We will determine within 120 calendar days whether your emissions averaging plan presents sufficient information. We will either approve the emissions averaging plan, request changes, or request additional information from you. Once we receive sufficient information, we will approve, disapprove, or request changes to the plan within 120 days. If we disapprove the emissions averaging plan, you must still be in compliance with the emission limitations and work practice standards in Tables 1 through 4 of this subpart by the compliance date.

(2) For all points included in an emissions average, you must comply with the procedures that are specified in paragraphs (c)(2)(i) through (v) of this section.

(i) Calculate and record monthly debits for all affected emission points that are controlled to a level less stringent than required by the emission limitations for those emission points. Use equations in paragraph (c)(5) of this section to calculate debits.

(ii) Calculate and record monthly credits for all emission points that are overcontrolled to compensate for the debits. Use equations in paragraph (c)(6) of this section to calculate credits. All process vent, storage tank, and wastewater emission points except those specified in paragraph (b) of this section may be included in the credit calculation.

(iii) Demonstrate that annual credits calculated according to paragraph (c)(6) of this section are greater than or equal to debits calculated according to paragraph (c)(5) of this section for the same annual compliance period. The initial demonstration in the emissions averaging plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debit-generating emission points must be made under representative operating conditions. After the compliance date, actual operating data must be used for all debit and credit calculations.

(iv) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (c)(5) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (c)(6) of this section. You determine compliance for the quarter based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(v) Record and report quarterly and annual credits and debits as required in paragraphs (d) and (e) of this section.

(3) You may not include emissions during periods of malfunction in calculation of credits and debits. You may not include periods of startup and shutdown for continuous processes in calculation of credits and debits.

(4) During periods of monitoring deviations, you must adjust credits and debits as specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) Assign no credits to the credit-generating emission point.

(ii) Assign maximum debits to the debit-generating emission point.

(iii) You may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in § 63.150(l).

(5) *Debits.* Debits are generated by the difference between the actual emissions from an affected emission point that is uncontrolled or controlled to a level less stringent than the applicable standard and the emissions allowed for the affected emission point. Calculate debits in accordance with the procedures specified in paragraphs (c)(5)(i) through (iv) of this section.

(i) Calculate sourcewide debits using Equation 1 of this section:

$$\text{Debits} = \sum_{i=1}^{n}\left[EPV_{iA} - (0.02)\left(EPV_{iU}\right)\right] + \sum_{i=1}^{n}\left[ES_{iA} - (0.05)\left(ES_{iU}\right)\right] + \sum_{i=1}^{n}\left[EWW_{iA} - \left(EWW_{iC}\right)\right] \qquad \text{(Eq. 1)}$$

Where:

Debits and all terms of Equation 1 of this section are in units of Mg/month, and;

EPV_{iU} = uncontrolled emissions from continuous process vent i and batch process i calculated according to the procedures specified in paragraph (c)(5)(ii) of this section;

EPV_{iA} = actual emissions from each affected continuous process vent i and batch process i that is uncontrolled or is controlled to a level less stringent than the required 98 percent reduction in Table 1 or 2 of this subpart. Calculate EPV_{iA} using the procedures in paragraph (c)(5)(ii) of this section;

ES_{iU} = uncontrolled emissions from storage tank i calculated according to the procedures specified in paragraph (c)(5)(iii) of this section;

ES_{iA} = actual emissions from each affected storage vessel i that is uncontrolled or is controlled to a level less stringent than the required 95 percent reduction in Table 4 of this subpart. Calculate

ES_{iA} using the procedures in paragraph (c)(5)(iii) of this section;

EWW_{iC} = emissions from each affected wastewater stream i if the wastewater stream had been managed and treated as specified in Table 3 of this subpart. Calculate EWW_{iC} using the procedures in paragraph (c)(5)(iv) of this section;

EWW_{iA} = actual emissions from each affected wastewater stream i that is uncontrolled or has been managed and treated in a manner that is less stringent than that specified in Table 3 of this subpart. Calculate EWW_{iA} using the procedures in paragraph (c)(5)(iv) of this section;

n = the number of emission points being included in the emissions average; the value of n is not necessarily the same for process vents, storage tanks, and wastewater.

(ii) Calculate emissions from process vents in accordance with the procedures specified in paragraphs (c)(5)(ii)(A) through (C) of this section.

(A) Except as provided in paragraph (c)(5)(ii)(C) of this section, calculate uncontrolled emissions for process vents using the procedures specified in § 63.1257(d)(2).

(B) Except as provided in paragraph (c)(5)(ii)(C) of this section, calculate actual emissions for process vents using the procedures specified in § 63.1257(d)(2) and (3), as applicable.

(C) As an alternative to the procedures described in paragraphs (c)(5)(ii)(A) and (B) of this section, for continuous process vents, you may calculate uncontrolled and actual emissions by the procedures described in § 63.150(g)(2). For purposes of complying with this paragraph, the term ''recovery device'' in § 63.150(g)(2) means ''process condenser.''

(iii) Calculate uncontrolled emissions from storage tanks in accordance with the procedures described in § 63.150(g)(3)(i). Calculate actual emissions from storage tanks using the procedures specified in § 63.150(g)(3)(ii) or (iii), as appropriate, except that when § 63.150(g)(3)(ii)(B) refers to the procedures in § 63.120(d) for determining percent reduction for a control device, § 63.1257(a)(1) shall apply for the purposes of this subpart.

(iv) Calculate emissions from wastewater using the procedures specified in § 63.150(g)(5).

(6) *Credits.* Credits are generated by the difference between emissions that are allowed for each affected and nonaffected emission point, and the actual emissions from that affected or nonaffected emission point that have been controlled after November 15, 1990 to a level more stringent than what is required in this subpart or any other State or Federal rule or statute. Calculate credits in accordance with the procedures specified in paragraphs (c)(6)(i) through (v) of this section.

(i) Calculate sourcewide credits using Equation 2 of this section:

$$\text{Credits} = D\sum_{i=1}^{n}\left[(0.02)\left(EPV1_{iU}\right) - EPV_{iA}\right] + D\sum_{i=1}^{m}\left(EPV2_{iB} - EPV2_{iA}\right) + D\sum_{i=1}^{n}\left[(0.05)\left(ES1_{iU}\right) - ES1_{iA}\right]$$
$$+ D\sum_{i=1}^{m}\left(ES2_{iB} - ES2_{iA}\right) + D\sum_{i=1}^{n}\left(EWW1_{iC} - EWW1_{iA}\right) + D\sum_{i=1}^{m}\left(EWW2_{iB} - EWW2_{iA}\right) \qquad \text{(Eq. 2)}$$

Where:

Credits and all terms in Equation 2 of this section are in units of Mg/month, the baseline date is November 15, 1990, the terms consisting of a constant multiplied by the uncontrolled emissions are the emissions from each emission point subject to a percent reduction requirement in Table 1, 2, or 4 of this subpart that are controlled to a level more stringent than the applicable percent reduction requirement, and;

$EPV1_{iU}$ = uncontrolled emissions from each affected continuous process vent i and batch process i calculated according to the procedures in paragraph (c)(6)(iii)(A) of this section;

$EPV1_{iA}$ = actual emissions from each affected continuous process vent i and batch process i that is controlled to a level more stringent than 98 percent. Calculate $EPV1_{iA}$ according to the procedures in paragraph (c)(6)(iii)(B) of this section;

$EPV2_{iB}$ = emissions from each nonaffected continuous process vent i and batch process i at the baseline date. Calculate $EPV2_{iB}$ according to the procedures in paragraph (c)(6)(iii)(C) of this section;

$EPV2_{iA}$ = actual emissions from each nonaffected continuous process vent i and batch process i that is controlled. Calculate $EPV2_{iA}$ according to the procedures in paragraph (c)(6)(iii)(C) of this section;

$ES1_{iU}$ = uncontrolled emissions from each affected storage tank i calculated according to the procedures in paragraph (c)(6)(iv) of this section;

$ES1_{iA}$ = actual emissions from each affected storage tank i that is controlled to a level more stringent than 95 percent. Calculate $ES1_{iA}$ according to the procedures in paragraph (c)(6)(iv) of this section;

$ES2_{iB}$ = emissions from each nonaffected storage tank i at the baseline date. Calculate $ES2_{iB}$ according to the procedures in paragraph (c)(6)(iv) of this section;

$ES2_{iA}$ = actual emissions from each nonaffected storage tank i that is controlled. Calculate $ES2_{iA}$ according to the procedures in paragraph (c)(6)(iv) of this section;

$EWW1_{iC}$ = emissions from each affected wastewater stream i if the wastewater stream had been managed and treated as specified in Table 3 of this subpart. Calculate $EWW1_{iC}$ according to the procedures in paragraph (c)(6)(v) of this section;

$EWW1_{iA}$ = emissions from each affected wastewater stream i that is controlled to a level more stringent than if the wastewater stream had been managed and treated as specified in Table 3 of this subpart. Calculate $EWW1_{iA}$ according to the procedures in paragraph (c)(6)(v) of this section;

$EWW2_{iB}$ = emissions from each nonaffected wastewater stream i at the baseline date. Calculate $EWW2_{iB}$ according to the procedures in paragraph (c)(6)(v) of this section;

$EWW2_{iA}$ = actual emissions from each nonaffected wastewater stream i that is controlled. Calculate $EWW2_{iA}$ according to the procedures in paragraph (c)(6)(v) of this section;

n = number of affected emission points that are included in the emissions average. The value of n is not necessarily the same for process vents, storage tanks, and wastewater;

m = number of nonaffected emission points included in the emissions average. The value of m is not necessarily the same for process vents, storage tanks, and wastewater;
D = discount factor equal to 0.9 for all credit-generating emission points.

(ii) For an emission point controlled using a pollution prevention measure, determine the nominal efficiency for calculating credits as described in § 63.150(j).

(iii) Calculate emissions from process vents in accordance with the procedures specified in paragraphs (c)(6)(iii)(A) through (C) of this section.

(A) Calculate uncontrolled emissions from affected process vents according to the procedures in paragraph (c)(5)(ii)(A) or (C) of this section.

(B) Calculate actual emissions from affected process vents with a nominal efficiency greater than 98 percent or a pollution prevention measure that achieves reductions greater than 98 percent using Equation 3 of this section:

$$EPV1_{iA} = EPV1_{iU} \times \left[1 - N_{eff}/100\right] \qquad \text{(Eq. 3)}$$

Where:
$EPV1_{iA}$ = actual emissions from each affected continuous process vent i or batch process i that is controlled to a level more stringent than 98 percent;
$EPV1_{iU}$ = uncontrolled emissions from each affected continuous process vent i or batch process i;
N_{eff} = nominal efficiency of control device or pollution prevention measure, percent.

(C) Calculate baseline and actual emissions from nonaffected process vents according to the procedures in § 63.150(c)(2)(iii) and (iv), except when the phrase ''paragraph (g)(2)'' is referred to in § 63.150(h)(2)(iii) and (iv), the provisions in paragraph (c)(5)(ii) of this section apply for the purposes of this subpart.

(iv) Calculate uncontrolled emissions from storage tanks according to the procedures described in paragraph § 63.150(g)(3)(i). Calculate actual and baseline emissions from storage tanks according to the procedures specified in § 63.150(h)(3), except when § 63.150(h)(3) refers to § 63.150(g)(3)(i).

(v) Calculate emissions from wastewater using the procedures in § 63.150(h)(5).

(7) You must establish and comply with the operating limits for each emission point in an emissions average according to § 63.2470 and Table 8 of this subpart.

(d) *Records.* You must maintain the records specified in paragraphs (d)(1) and (4) of this section.

(1) All records specified in § 63.2525.

(2) Calculations of the debits and credits according to paragraphs (c)(5) and (6) of this section for the last quarter and the prior four quarters.

(3) A current copy of the emissions averaging plan.

(4) The number of turnovers for each storage tank used in an emissions average.

(e) *Reporting.* You must submit the information specified in paragraphs (e)(1) and (2) of this section.

(1) The emissions averaging plan as specified in paragraph (c)(1)(iii) of this section.

(2) The required information for compliance reports specified in § 63.2520(d) for each emission point in emission averages.

(3) The compliance reports must also include the information specified in paragraphs (e)(3)(i) through (iv) of this section.

(i) Any changes to the processes, storage tanks, or waste management units included in an emissions average.

(ii) The calculation of the debits and credits for the reporting period.

(iii) Changes to the emissions averaging plan which affect the calculation methodology of uncontrolled or controlled emissions or the hazard or risk equivalency determination.

(iv) Any changes to the operating limits monitored according to paragraph (c)(7) of this section.

§ 63.2505 How do I comply with the alternative standard?

As an alternative to complying with the emission limitations and work practice standards for process vents and storage tanks in Tables 1, 2, and 4 of this subpart, you may comply with the emission limitations in paragraph (a) of this section and demonstrate initial and continuous compliance in accordance with the requirements in paragraphs (b) and (c) of this section. Reporting and recordkeeping requirements are specified in §§ 63.2520 and 63.2525.

(a) *Emission limitations and work practice standards.* (1) You must route vent streams through a closed-vent system to a control device that reduces HAP emissions as specified in either paragraph (a)(1)(i) or (ii) of this section.

(i) If you use a combustion control device, it must reduce HAP emissions as specified in paragraphs (a)(1)(i)(A), (B), and (C) of this section.

(A) To an outlet TOC concentration of 20 ppmv or less.

(B) To an outlet concentration of hydrogen halides and halogens of 20 ppmv or less.

(C) As an alternative to paragraph (a)(1)(ii)(B) of this section, if you control halogenated vent streams emitted from a combustion device followed by a scrubber, you may reduce the hydrogen halides and halogens generated in the combustion device by ≥95 percent by weight in the scrubber and establish operating parameters for the scrubber in accordance with Table 8 of this subpart.

(ii) If you use a noncombustion control device, it must reduce HAP emissions to an outlet total organic HAP concentration of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less.

(2) You must comply with the work practice standards for closed-vent systems in Table 5 of this subpart.

(3) Any batch process vents within a process that are not controlled according to this alternative standard must be controlled according to the emission limitations and work practice standards in Table 2 of this subpart.

(b) *Initial compliance requirements.* You demonstrate initial compliance with the alternative standard if you comply with the requirements in paragraphs (b)(1) through (6) of this section.

(1) Install and begin to operate and maintain each CEMS in accordance with paragraph (c) of this section no later than the date 3 years after the effective date of this subpart.

(2) Conduct a performance evaluation of the CEMS as specified in § 63.2475(a)(3).

(3) Submit the results of any determination of the target analytes or predominant HAP in the Notification of Compliance Status.

(4) If you add supplemental gases to the vent stream or manifold, determine either the oxygen concentration (if you use a combustion device), or both the total vent stream and supplemental gas stream flow rates (if you use a noncombustion device), and calculate the ratio in Equation 1 or 2 of § 63.2470

to use in correcting the measured concentrations for supplemental gases.

(5) If you elect to comply with the requirement to reduce hydrogen halides and halogens by ≥95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must demonstrate initial compliance by conducting a performance test and setting a site-specific operating limit(s) for the scrubber in accordance with entry 2.b. in Table 16 of this subpart. The applicable operating limits are specified in Table 8 of this subpart. You must submit the results of the initial compliance demonstration in the Notification of Compliance Status.

(6) Comply with the requirements for closed-vent systems in entries (c) and (d) of Table 14 of this subpart.

(c) *Continuous compliance requirements.* You demonstrate continuous compliance with the emission limitations in paragraph (a) of this section according to the requirements in paragraphs (c)(1) through (7) of this section.

(1) Except as specified in paragraphs (c)(1)(iii) and (iv) of this section, you must install, operate, and maintain CEMS to measure TOC and total hydrogen halide and halogen concentrations in accordance with paragraphs (c)(1)(i) and (ii) of this section and in accordance with § 63.2475(a)(1), (2), and (4), and you must reduce the CEMS data as specified in § 63.2475(a)(5). If you add supplemental gases to the vent stream or manifold, you must correct measured concentrations for supplemental gases or monitor other operating parameters as specified in paragraph (c)(7) of this section. The reduced results must be below the concentration limits specified in paragraph (a) of this section.

(i) Install CEMS to measure TOC in accordance with paragraph (c)(1)(i)(A) or (B) of this section.

(A) For noncombustion devices, install a CEMS that meets Performance Specification 8, 9, or 15.

(B) For combustion devices, install a CEMS that meets Performance Specification 8 and report the results as C_1.

(ii) Install CEMS to measure total halide and halogen concentrations in accordance with paragraph (c)(1)(ii)(A) or (B) of this section:

(A) Install a CEMS that meets Performance Specification 15 to measure HCl; or

(B) If you wish to measure HCl using a CEMS other than an Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 before we promulgate performance specifications for such monitors, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(iii) You do not need to monitor the hydrogen halide and halogen concentrations if, based on process knowledge, you determine that the emission stream does not contain hydrogen halides or halogens.

(iv) If you elect to comply with the requirement to reduce hydrogen halides and halogens by ≥95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must comply with the requirements in paragraphs (c)(1)(iv)(A) through (C) of this section.

(A) Install, operate, and maintain CPMS for the scrubber as specified in § 63.2475(b) through (f), as applicable.

(B) Collect and reduce CPMS data for the scrubber in accordance with the requirements specified in entry 5., 6., or 7. of Table 18 of this subpart, as applicable.

(C) Maintain the daily or block average CPMS levels within the ranges established during the initial performance test.

(2) You must install, calibrate, and operate a flow indicator as specified in § 63.2475(g).

(3) You must monitor and collect data according to § 63.2485(b) and (c).

(4) You must demonstrate continuous compliance with the work practice standards for closed-vent systems as specified in entries (i) and (j) in Table 19 of this subpart.

(5) You must report each deviation according to § 63.2490(b).

(6) You must comply with the startup, shutdown, and malfunction requirements in § 63.2490(c) and (d).

(7) *Correction for supplemental gases.* If you add supplemental gases to the vents or manifolds, you must either correct for supplemental gases as specified in § 63.2470(g) or comply with the requirements of paragraph (c)(7)(i) or (ii) of this section. If you correct for supplemental gases as specified in § 63.2470(g)(2) for noncombustion control devices, you must evaluate the flow rates as specified in paragraph (c)(7)(iii) of this section.

(i) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.2470(g), you must monitor residence time and firebox temperature according to the requirements of paragraphs (d)(7)(i)(A) and (B) of this section. Monitoring of residence time may be accomplished by monitoring flowrate into the combustion chamber.

(A) If complying with the alternative standard instead of complying with an emission limitation of 95 percent or less, you must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C.

(B) If complying with the alternative standard instead of complying with an emission limitation of 98 percent or less, you must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

(ii) *Provisions for dense gas systems.* As an alternative to correcting for supplemental gases as specified in § 63.2470(g), for noncombustion devices used to control emissions from dense gas systems, as defined in § 63.2550, you must monitor flowrate as specified in paragraphs (d)(7)(ii)(A) through (D) of this section.

(A) Use Equation 1 of this section to calculate the system flowrate setpoint at which the average concentration is 5,000 ppmv TOC:

$$Q_{set} = \frac{721 \times E_{an}}{5{,}000} \qquad \text{(Eq. 1)}$$

Where:

Q_{set} = system flowrate setpoint, scfm;
E_{an} = annual emissions entering the control device, lbmoles/yr.

(B) Annual emissions used in Equation 1 of this section must be based on the actual mass of organic compounds entering the control device as calculated from the most representative emissions inventory data that you submitted within the 5 years before the Notification of Compliance Status is due. You must recalculate the system flowrate setpoint once every 5 years using the annual emissions from the most representative emissions inventory data submitted during the 5-year period after the previous calculation. Results of the initial calculation must be included in the Notification of Compliance Status, and recalculated values must be included in the next compliance report after each recalculation. For all calculations after the initial calculation, to use emissions inventory data calculated using procedures other than those specified in § 63.1257(d), you must submit the emissions inventory data calculations and rationale for their use in the Precompliance report, Notification of Process Change report, or an application for a part 70 permit renewal or revision.

(C) In the Notification of Compliance Status, you may elect to establish both a maximum daily average operating flowrate limit above the flowrate setpoint and a reduced outlet concentration limit corresponding to this flowrate limit. You may also establish reduced outlet concentration

limits for any daily average flowrates between the flowrate setpoint and the flowrate limit. The correlation between these elevated flowrates and the corresponding outlet concentration limits must be established using Equation 2 of this section:

$$C_a = \frac{Q_{set}}{Q_{lim}} \times 50 \qquad \text{(Eq. 2)}$$

Where:

C_a = adjusted outlet concentration limit, dry basis, ppmv;
50 = outlet concentration limit associated with the flowrate setpoint, dry basis, ppmv;
Q_{set} = system flowrate setpoint, scfm;
Q_{lim} = actual system flowrate limit, scfm.

(D) You must install and operate a monitoring system for measuring system flowrate. The flowrate into the control device must be monitored and recorded at least once every hour. The system flowrate must be calculated as the average of all values measured during each 24-hour operating day. The flowrate monitoring sensor must have a minimum tolerance of 2 percent of the system flowrate setpoint, and the flowrate monitoring device must be calibrated at least semiannually.

(iii) *Flow rate evaluation for noncombustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.2470(g)(2) for noncombustion devices, you must evaluate the volumetric flow rate of supplemental gases, Q_s, and the volumetric flow rate of all gases, Q_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 2 of § 63.2470, must be included in the Notification of Compliance Status and in the next compliance report submitted after an operating scenario change.

§ 63.2510 How may I transfer wastewater to a treatment unit that I do not own or operate?

(a) You may elect to transfer an affected wastewater stream or a residual removed from an affected wastewater stream to an on-site treatment operation that you do not own or operate, or to an off-site treatment operation, according to the requirements in § 63.132(g), except as specified in paragraphs (a)(1) through (4) of this section.

(1) As an alternative to the management and treatment options specified in § 63.132(g)(2), any affected wastewater stream (or residual removed from an affected wastewater stream) that contains less than 50 ppmw of HAP in Table 2 to subpart GGG of this part may be transferred offsite if the transferee manages and treats the wastewater stream or residual in accordance with paragraphs (e)(1)(i) and (ii) of this section.

(i) The wastewater stream or residual is treated in a biological treatment unit in accordance with §§ 63.138 and 63.145.

(ii) The waste management units up to the activated sludge unit are covered, or you demonstrate that less than 5 percent of the total HAP in Table 3 to subpart GGG of this part is emitted from the waste management units up to the activated sludge unit.

(2) References in § 63.132(g) to ''Group 1'' wastewater mean ''affected'' wastewater for the purposes of this subpart.

(3) The references in § 63.132(g)(2) to ''§§ 63.133 through 63.147'' and in § 63.132(g)(1)(ii) to ''provisions of this subpart'' (i.e., subpart G) refer to the process wastewater provisions in §§ 63.2450 through 63.2490, 63.2520, and 63.2525 for the purposes of this subpart.

(4) The reference in § 63.132(g)(2) to ''§ 63.102(b) of subpart F'' does not apply for the purposes of this subpart.

(b) You must keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic HAP which are required to be managed and treated in accordance with the provisions of this subpart.

Notification, Reports, and Records

§ 63.2515 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) through (h) that apply to you by the dates specified. For any performance test required as part of the initial compliance procedures for batch process vents in Table 11 of this subpart, you must also submit the test plan required by § 63.7(c) and the emission profile with the Notification of the Performance Test.

(b) As specified in § 63.9(b)(2), if you startup your affected source before the effective date of the subpart, you must submit an Initial Notification not later than 120 calendar days after the effective date of the subpart.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) *Notification of Compliance Status.* If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 10 through 16 of this subpart, you must submit a Notification of Compliance Status according to the schedule in paragraphs (e)(1) and (2) of this section, and the Notification of Compliance Status must contain the information specified in paragraph (e)(3) of this section.

(1) For an existing source in operation on the effective date, you must submit the Notification of Compliance Status no later than the compliance date specified in § 63.2445(b). For parts of an area source that become a major source and an existing affected source, you must submit the Notification of Compliance Status no later than the compliance date specified in § 63.2445(d)(2).

(2) If you have a new source, reconstructed source, or parts of a former area source that are a new source, you must submit the Notification of Compliance Status no later than 240 days after the applicable compliance date specified in § 63.2445(a) or (d)(1).

(3) The Notification of Compliance Status must include the information in paragraphs (e)(3)(i) through (viii) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from the affected source.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 10 through 16 of this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Listing of all operating scenarios.

(v) Descriptions of worst-case operating and/or testing conditions for control devices.

(vi) Identification of emission points subject to overlapping requirements described in § 63.2535 and the authority under which you will comply.

(vii) The information specified in § 63.1039(a)(1) through (3) for each process subject to the work practice standards for equipment leaks in Table 5 of this subpart.

(viii) If you are complying with the vapor balancing work practice standard for storage tanks, include a statement to that effect, and a statement that the pressure vent setting on the storage tank is equal to or greater than 2.5 pounds per square inch gauge (psig), as specified in Table 13 of this subpart.

(f) *Notification of Process Change.* (1) Except as specified in paragraph (f)(2) of this section, whenever you make a process change, or change any of the information submitted in the Notification of Compliance Status, you must submit a report semiannually. For the purposes of this section, a process change means the startup of a new process, as defined in § 63.2550. You may submit the notification as part of the compliance report required under § 63.2520(d). The notification must include all of the information in paragraphs (f)(1)(i) through (iv) of this section.

(i) A brief description of the process change.

(ii) A description of any modifications to standard procedures or quality assurance procedures.

(iii) Revisions to any of the information reported in the original Notification of Compliance Status under paragraph (e) of this section.

(iv) Information required by the Notification of Compliance Status under paragraph (e) of this section for changes involving the addition of processes or equipment.

(2) You must submit a report 60 days before the scheduled implementation date of either of the changes identified in paragraphs (f)(2)(i) or (ii) of this section.

(i) Any change in the activity covered by the Precompliance report.

(ii) A change in the status of a control device from small to large.

§ 63.2520 What reports must I submit and when?

(a) You must submit each report in Table 20 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 20 of this subpart and according to paragraphs (b)(1) through (5) of this section.

(1) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2445 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.2445.

(2) The first Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.2445.

(3) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) *Precompliance report.* You must submit a Precompliance report to request approval of any of the information in paragraphs (c)(1) through (5) of this section. We will either approve or disapprove the report within 90 days after we receive it. If we disapprove the report, you must still be in compliance with the emission limitations and work practice standards in this subpart by the compliance date. To change any of the information submitted in the report, you must notify us 60 days before the planned change is to be implemented.

(1) Requests for approval to set operating limits for parameters other than those in Table 8 of this subpart, and for control devices and treatment units other than those in Table 8 of this subpart. Alternatively, you may make these requests according to § 63.8(f).

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to entry 8. on Table 8 of this subpart are operating as designed.

(3) A description of the test conditions, data, calculations, and other information used to establish additional operating limits according to § 63.2470(e)(3).

(4) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions from process vents as required in Table 11 of this subpart.

(5) The pollution prevention demonstration summary required in § 63.2495(c)(1), if you are complying with the pollution prevention alternative.

(d) *Compliance report.* The Compliance report must contain the information specified in paragraphs (d)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the Compliance report must include the information in § 63.10(d)(5)(i).

(5) The Compliance report must contain the information on deviations according to paragraphs (d)(5)(i), (ii), and (iii) of this section.

(i) If there are no deviations from any emission limitations (emission limits and operating limits) that apply to you, and there are no deviations from the requirements for work practice standards in Table 19 of this subpart, include a statement that there were no deviations from the emission limitations or work practice standards during the reporting period.

(ii) For each deviation from an emission limitation (emission limits and operating limits) and for each deviation from the requirements for work practice standards in Table 19 of this subpart that occurs at an affected source where you are not using a continuous monitoring system (CMS) to comply with the emission limitations or work practice standards in this subpart, you must include the information in paragraphs (d)(5)(ii)(A) through (C) of this section. This includes periods of startup, shutdown, and malfunction.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations (including unknown cause, if

applicable), as applicable, and the corrective action taken.

(C) Operating logs and operating scenarios.

(iii) For each deviation from an emission limitation (emission limits and operating limits) occurring at an affected source where you are using a CMS to comply with the emission limit in this subpart, you must include the information in paragraphs (d)(5)(iii)(A) through (N) of this section. This includes periods of startup, shutdown, and malfunction.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(H) An identification of each hazardous air pollutant that was monitored at the affected source.

(I) A brief description of the process units.

(J) A brief description of the CMS.

(K) The date of the latest CMS certification or audit.

(L) A description of any changes in CMS, processes, or controls since the last reporting period.

(M) Operating logs and operating scenarios.

(N) The operating day or operating block average values of monitored parameters.

(6) If there were no periods during which the CMS (including CEMS and CPMS) was out-of-control as specified in § 63.8(c)(7), include a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(7) If you invoke the delay of repair provisions in § 63.104(e) for heat exchange systems, you must include the information in § 63.104(f)(2)(i) through (iv) in your next compliance report. If the leak remains unrepaired, you must also submit the information in each subsequent compliance report until the repair of the leak is reported.

(8) Include the information in paragraphs (d)(8)(i) through (iii) of this section, as applicable, for storage tanks subject to the emission limitations and work practice standards in Table 4 of this subpart.

(i) For each storage tank subject to control requirements, include periods of planned routine maintenance during which the control device does not comply with the emission limitation in Table 4 of this subpart.

(ii) For each storage tank controlled with a floating roof, include a copy of the inspection record (required in § 63.1065) when inspection failures occur.

(iii) If you elect to use an extension for a floating roof inspection in accordance with § 63.1063(c)(2)(iv)(B) or (e)(2), include the documentation required by § 63.1063 (c)(2)(iv)(B) or (e)(2).

(9) Include each new operating scenario which has been operated since the time period covered by the last compliance report. For each new operating scenario, you must provide verification that the operating conditions for any associated control or treatment device have not been exceeded and that any required calculations and engineering analyses have been performed. For the initial compliance report, each operating scenario operated since the compliance date must be submitted.

(10) Include the information specified in § 63.1039(b)(1) through (8) for processes subject to the work practice standards for equipment leaks in Table 5 of this subpart.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 20 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), or work practice standard in this subpart, submission of the Compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.2525 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (11) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(4) Records specified in § 63.1038(b) and (c) for equipment subject to the work practice standards for equipment leaks in Table 5 of this subpart.

(5) Daily schedule or log of each operating scenario.

(6) The information specified in paragraphs (a)(6)(i) and (ii) for batch processes in compliance with a percent reduction emission limit in Table 2 of this subpart and containing process vents controlled to less the percent reduction requirement.

(i) Records of whether each batch operated was considered a standard batch.

(ii) The actual uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(7) The information specified in paragraphs (a)(7)(i) through (iv) of this section for each batch process with uncontrolled HAP emissions less than 10,000 lb/yr.

(i) A record of the number of batches per year.

(ii) A record of whether each batch operated was considered a standard batch.

(iii) The actual uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(iv) Records of the daily 365-day rolling summations of emissions.

(8) Records of planned routine maintenance for control devices used to comply with the percent reduction emission limitations for storage tanks in Table 4 of this subpart.

(9) The maintenance wastewater plan required in Table 12 of this subpart.

(10) A record of each time a safety device is opened to avoid unsafe

conditions in accordance with § 63.2450(c).

(11) Records of the results of each CPMS calibration, validation check, and inspection required by § 63.2475(c)(6) through (8), (d)(4) and (5), (e)(4) through (7), and (f)(3) and (4).

(b) For each CEMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (*i.e.,* superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in Tables 17, 18, and 19 of this subpart to show continuous compliance with each emission limitation and work practice standard that applies to you.

§ 63.2530 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.2535 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other subparts of this part.* If you have an MCPU that is a batch process vent that is part of a CMPU as defined in subparts F and G of this part, you must comply with the emission limitations; work practice standards; and the compliance, monitoring, reporting and recordkeeping requirements for batch process vents in this subpart FFFF, and you must continue to comply with the requirements in subparts F, G, and H of this part that are applicable to the CMPU and associated equipment.

(b) *Compliance with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (1) After the compliance dates specified in § 63.2445, if a control device that you use to comply with this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC; or the monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC; and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if your facility had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart; or with the monitoring and recordkeeping requirements in 40 CFR part 264 or 265 and the reporting requirements in 40 CFR part 264, as described in this paragraph, which constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If you elect to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, you must report the information described in § 63.2520, and you must identify in the Notification of Compliance Status required by § 63.2520 the monitoring, recordkeeping, and reporting authority under which you will comply.

(2) After the compliance dates specified in § 63.2445, if you have an affected source with equipment that is also subject to 40 CFR part 264, subpart BB or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR part 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of this subpart, to the extent that the requirements of 40 CFR part 264 and/or 265 duplicate the requirements of this subpart. You must identify in the Notification of Compliance Status required by § 63.2520 if you will comply with the recordkeeping and reporting authority under 40 CFR part 264 and/or 265.

(c) *Compliance with 40 CFR part 60, subpart Kb.* After the compliance dates specified in § 63.2445, you are in compliance with the provisions of this subpart FFFF for any storage tank that is assigned to an MCPU and that is both controlled with a floating roof and in compliance with the provisions of 40 CFR part 60, subpart Kb. You are in compliance with this subpart FFFF if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with the provisions of 40 CFR part 60, subpart Kb, except that you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart FFFF. You must also identify in your Notification of Compliance Status required by § 63.2520 which storage tanks are in compliance with 40 CFR part 60, subpart Kb.

(d) *Compliance with subpart I of this part.* After the compliance dates specified in § 63.2445, if you have an affected source with equipment subject to subpart I of this part, you may elect to comply with either the provisions of this subpart FFFF or the provisions of subpart H of this part for all such equipment. You must identify in the Notification of Compliance Status required by § 63.2520 the provisions with which you will comply.

(e) *Compliance with subpart GGG of this part for equipment leaks.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart and you have an affected source with equipment subject to § 63.1255, you may elect to comply with the provisions of this subpart FFFF for all such equipment. You must identify in the Notification of Compliance Status required by § 63.2520 the provisions with which you will comply.

(f) *Compliance with subpart MMM of this part for equipment leaks.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart and you have an affected source with equipment subject to § 63.1363, you may elect to comply with the provisions of this subpart FFFF for all such equipment. You must identify in the Notification of Compliance Status required by § 63.2520 the provisions with which you will comply.

(g) *Compliance with subpart GGG of this part for wastewater.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart and you have an affected source that generates wastewater streams subject to § 63.1256, you may elect to comply with the provisions of this subpart FFFF for all such wastewater streams. You must identify in the Notification of Compliance Status required by § 63.2520 the provisions with which you will comply.

(h) *Compliance with subpart MMM of this part for wastewater.* After the compliance dates specified in § 63.2445, if you have an affected source subject to this subpart, and you have an affected source that generates wastewater streams subject to § 63.1362(d), you may elect to comply with the provisions of this subpart FFFF for all such wastewater streams (except that the 99 percent reduction requirement for streams subject to § 63.1362(d)(10) still applies). You must identify in the Notification of Compliance Status required by § 63.2520 the provisions with which you will comply.

(i) *Compliance with other regulations for wastewater.* After the compliance dates specified in § 63.2445, if you have an affected wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272, you may elect to determine whether this subpart or 40 CFR parts 260 through 272 contain the more stringent control requirements (e.g., design, operation, and inspection requirements for waste management units; numerical treatment standards; etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements. Compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of this subpart constitute compliance with this subpart. For example, provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.138(h) constitute compliance with this subpart. In the Notification of Compliance Status required by § 63.2520, you must identify the more stringent provisions of 40 CFR parts 260 through 272 with which you will comply. You must also identify in the Notification of Compliance Status required by § 63.2520 the information and procedures that you used to make any stringency determinations. If you do not elect to determine the more stringent requirements, you must comply with both the provisions of 40 CFR parts 260 through 272 and the provisions of this subpart.

(j) *Compliance with 40 CFR part 60, subparts III, NNN, and RRR.* After the compliance dates specified in § 63.2445, if you have an MCPU that contains equipment subject to the provisions of this subpart that are also subject to the provisions of 40 CFR part 60, subpart III, NNN, or RRR, you may elect to apply this subpart to all such equipment in the MCPU. If you elect this method of compliance, you must consider all total organic compounds, minus methane and ethane, in such equipment for purposes of applicability and compliance with this subpart, as if they were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph, will constitute compliance with 40 CFR part 60, subpart III, NNN, or RRR, as applicable.

§ 63.2540 What parts of the General Provisions apply to me?

Table 21 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.2545 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the US EPA, or a delegated authority such as your State, local, or tribal agency. If the US EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your US EPA Regional Office to find out if this subpart is delegated to your 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 paragraph (c) of this section are retained by the Administrator of US EPA and are not delegated to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the non-opacity emission limitations and work practice standards in § 63.2450(a) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2550 What definitions apply to this subpart?

(a) The following terms used in this subpart and in referenced subparts are defined in § 63.101: heat exchange system, and maintenance wastewater.

(b) The following terms used in this subpart and in referenced subparts are defined in § 63.111: annual average concentration, annual average flow rate, automated monitoring and recording system, boiler, car-seal, closed-vent system, combustion device, container, cover, duct work, enhanced biological treatment system, flow indicator, halogenated vent stream, hard-piping, individual drain system, junction box, oil-water separator, point of determination, primary fuel, process heater, residual, sewer line, surface impoundment, Table 8 compound, Table 9 compound, total resource effectiveness (TRE) index value, treatment process, wastewater tank, and water seal controls.

(c) The following terms used in this subpart and in referenced subparts are defined in § 63.1020: connector, double block and bleed system, in gas and vapor service, in heavy liquid service, in light liquid service, in liquid service, in organic HAP service, in vacuum service, instrumentation system, liquids dripping, nonrepairable, open-ended valve or line, pressure relief device or valve, repaired, and screwed (threaded) connector.

(d) The following terms used in this subpart and in referenced subparts are defined in § 63.1601: external floating roof (EFR), flexible fabric sleeve seal, floating roof, initial fill or initial filling, internal floating roof (IFR), liquid-mounted seal, mechanical shoe seal or metallic shoe, and vapor-mounted seal.

(e) The following terms used in this subpart and in referenced subparts are defined in § 63.1251: actual HAP emissions, air pollution control device (or control device), batch emission episode, batch operation or batch process, block, cleaning operation, consumption, fixed roof, hydrogen halides and halogens, nondedicated formulation, process condenser, production-indexed HAP consumption factor, production-indexed VOC consumption factor, total organic compounds (TOC), uncontrolled HAP emissions, and unit operation.

(f) All terms used in this subpart that are not listed in paragraphs (a) through (e) of this section are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Bulk loading means the loading, into a tank truck or rail car, of liquid products or isolated intermediates that are materials described in § 63.2435(b) and that contain one or more of the organic HAP, as defined in section 112 of the CAA, from a loading rack. A loading rack is the system used to fill tank trucks and railcars at a single geographic site.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air emissions from the treatment process are routed to a control device by means of a closed-vent system or by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 63.1251, or a floating flexible membrane cover that meets the requirements specified in § 63.134.

Construction means the onsite fabrication, erection, or installation of an affected source or MCPU. Addition of new equipment to an MCPU subject to existing source standards does not constitute construction, but it may constitute reconstruction of the affected source or MCPU if it satisfies the definition of reconstruction in § 63.2440 (f) or (g).

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If a HAP is generated in the process as well as added as a raw material, consumption includes the quantity generated in the process.

Dedicated MCPU means an MCPU that is composed of equipment that is used to manufacture the same product for a continuous period of 6 months or greater. The MCPU includes any shared storage tanks that are determined to belong to the MCPU according to the procedures in § 63.2440(c).

Dense gas system means a conveyance system operated to limit oxygen levels below 12 percent.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit) or work practice standard;

(2) fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Family of materials means grouping of materials with the same basic composition produced using the same basic feedstocks, but that may vary, for example, by molecular weight, functional group, or manufacturing equipment configuration. Examples of families of materials include, but are not limited to, alkyd resins, polyester resins, and synthetic fatty acids.

Isolated intermediate is obtained as the product of a process. An isolated intermediate is usually a product of a chemical synthesis, fermentation, or biological extraction process; several different isolated intermediates may be produced in the manufacture of a product. An isolated intermediate is stored before subsequent processing. Storage occurs at any time the intermediate is placed in equipment used solely for storage, such as drums, totes, day tanks, and storage tanks. The storage of an isolated intermediate marks the end of a process.

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tons/yr, before control.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the MCPU into an individual drain system in preparation for or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of pumps into an individual drain system, and draining of portions of the MCPU for repair. Wastewater from cleaning operations is not considered maintenance wastewater.

Miscellaneous organic chemical manufacturing process means all equipment which collectively function to produce a product or isolated intermediate that are materials described in § 63.2435(b). A process may consist of one or more unit operations. For the purposes of this subpart, process includes any, all or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a product or isolated intermediate. Cleaning operations conducted are considered part of the process. Nondedicated solvent recovery operations located within a contiguous area within the affected source are considered single processes. A storage tank that is used to accumulate used solvent from multiple batches of a single process for purposes of solvent recovery does not represent the end of the process. Nondedicated formulation operations (not including mixing, as defined in this section) occurring within a contiguous area are considered a single process that is used to formulate numerous materials and/or products. Quality assurance and quality control laboratories are not considered part of any process. Ancillary activities are not considered a process or part of any process. Ancillary activities include boilers and incinerators (not used to comply with the emission limitations in Tables 1 through 4 of this subpart), chillers and refrigeration systems, and other equipment and activities that are not directly involved (i.e., they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a product or isolated intermediate.

Mixing means an operation in which a material is combined with one or more materials at ambient temperature without a chemical reaction.

Nondedicated solvent recovery means a recovery device that receives material from more than one MCPU.

On-site or on site means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or MCPU to which the records pertain, or storage in central files elsewhere at the major source.

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

Operating scenario means, for the purposes of reporting and recordkeeping, any specific operation of an MCPU and includes for each process:

(1) A description of the process and the type of process equipment used;

(2) An identification of related process vents and their associated emissions episodes and durations, wastewater point of determination (POD), and storage tanks;

(3) The applicable control requirements of this subpart, including the level of required control, and for vents, the level of control for each vent;

(4) The control or treatment devices used, as applicable, including a description of operating and/or testing conditions for any associated control device;

(5) The process vents, wastewater POD, and storage tanks (including those from other processes) that are simultaneously routed to the control or treatment device(s);

(6) The applicable monitoring requirements of this subpart and any parametric level that assures compliance for all emissions routed to the control or treatment device;

(7) Calculations and engineering analyses required to demonstrate compliance; and

(8) For reporting purposes, a change to any of these elements not previously reported, except for paragraph (5) of this definition, constitutes a new operating scenario.

Predominant HAP means as used in calibrating an analyzer, the single organic HAP that constitutes the largest percentage of the total HAP in the analyzed gas stream, by volume.

Process vent means a vent from a unit operation or vents from multiple unit operations within a process that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, and process tanks. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii), test data using Methods 18 of 40 CFR part 60, appendix A, or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vents. Process vents do not include vents on storage tanks, wastewater emission sources, or pieces of equipment subject to the emission limitations and work practice standards in Tables 3 through 5 of this subpart.

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals from process vent streams for reuse in a process at the affected source and from wastewater streams for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device for a wastewater stream, a decanter and any other equipment based on the operating principle of gravity separation must receive only two-phase liquid streams.

Responsible official means responsible official as defined in 40 CFR 70.2.

Shutdown means the cessation of operation of a continuous process for any purpose. Shutdown also means the cessation of a batch process or any related individual piece of equipment required or used to comply with this subpart as a result of a malfunction or for replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown also applies to emptying and degassing storage vessels. Shutdown does not apply to cessation of a batch process at the end of a campaign, for routine maintenance, for rinsing or washing of equipment between batches, or other routine operations.

Small control device means a control device that controls total HAP emissions of less than 10 tons/yr, before control.

Standard batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a standard batch are based on the operating conditions that result in highest emissions. The standard batch defines the uncontrolled and controlled emissions for each emission episode defined under the operating scenario.

Startup means the setting in operation of a continuous process unit for any purpose the first time a new or reconstructed batch process unit begins production; or, for new equipment added, including equipment used to comply with this subpart, the first time the equipment is put into operation; or for the introduction of a new product/process, the first time the product or process is run in equipment. For batch process units, startup does not apply to the first time the equipment is put into operation at the start of a campaign to produce a product that has been produced in the past, after a shutdown for maintenance, or when the equipment is put into operation as part of a batch within a campaign. For equipment subject to the work practice standards in Table 5 of this subpart, startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks. Storage tank also means a tank or other vessel in a tank farm that receives and accumulates used solvent from multiple batches of a process or processes for purposes of solvent recovery. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process tanks (including product tanks and isolated intermediate tanks).

Supplemental gases are any gaseous streams that are not defined as process ents, or closed-vent systems from wastewater management and treatment units, storage tanks, or equipment components and that contain less than 50 ppmv TOC, as determined through process knowledge, that are introduced into vent streams or manifolds. Air required to operate combustion device burner(s) is not considered supplemental gas.

System flowrate means the flowrate of gas entering the control device.

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.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include wastewater tanks, air flotation units, surface impoundments, containers, oil-water or organic-water separators, individual drain systems, biological wastewater treatment units, waste incinerators, and organic removal devices such as steam and air stripper units, and thin film evaporation units. If such equipment is used for recovery, then it is part of a miscellaneous organic chemical manufacturing process and is not a waste management unit.

Wastewater stream means water that is discarded from an MCPU through a single POD and that contains either: an annual average concentration of Table 9 compounds (as defined in § 63.111) of at least 5 ppmw and has an annual average flow rate of 0.02 liters per minute or greater, or an annual average concentration of Table 9 compounds (as defined in § 63.111) of at least 10,000 ppmw at any flow rate. For the purposes of this subpart, noncontact cooling water is not considered a wastewater stream.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act (CAA).

Tables to Subpart FFFF of Part 63

As required in §§ 63.2450(a)(1) and (f), 63.2460(a)(2), and 63.2500(b)(1), you must meet each emission limitation and work practice standard in the following table that applies to your continuous process vents:

TABLE 1 TO SUBPART FFFF.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS

For * * *	You must * * *	And you must * * *
1. Each continuous process vent with a TRE: ≤2.6 at an existing source; or ≤5.0 at a new or reconstructed source.	Use a control device to reduce HAP emissions by ≥98 percent by weight; or use a control device to reduce emissions to an outlet total organic HAP or TOC concentraiton ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤ppmv, both corrected for supplemental gases as specified in § 63.2470(g); or reduce HAP emissions using a flare that meets the performance requirements specified in § 63.11(b), but you may not use a flare for halogenated vent streams; or reduce HPA emissions using a control device specified in § 63.2455(f); or achieve and maintain a TRE index value >2.6 for existing sources and 5.0 for new sources at the outlet of the final recovery device, or prior to release of the vent streasm to the atmosphere if no recovery device is present.	Route the vent stream to the control device through a closed-vent system; and comply with the work practice standards for closed-vent systems specified in Table 5 of this subpart; and comply with the emission limitations in Table 7 of this subpart, if you use a combustion device to control halogenated vent streams. Determine whether a vent stream is halogenated according to § 63.2460(b).
2. Each continuous process vent with a TRE >2.6 but ≤5.0 at an existing source.	Maintain the TRE >2.6 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present.	Non applicable.
3. Each continuous process vent with a TRE >5.0 but ≤8.0 at a new or reconstructed source.	Maintain the TRE >5.0 at the outlet of the final recovery device, or prior to release of the vent stream to the atmosphere if no recovery device is present.	Non applicable

As required in §§ 63.2450(a)(2) and (f), 63.2495(b), 63.2500(b)(1), and 63.2505(a)(4), you must meet each emission limitation and work practice standard in the following table that applies to your batch process vents:

TABLE 2 TO SUBPART FFFF.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS

For * * *	You must * * *	And you must * * *
1. The sum of all batch process vents within a process if the total uncontrolled HAP emission are <10,000 lb/yr at an existing source; or <3,000 lb/yr at a new or reconstruced source.	Maintain annual emissions below the applicable mass limits.	Non applicable.
2. The sum of all batch process vents within a process with uncontrolled total HAP emissions ≥10,000 lb/yr at an existing source; or ≥3,000 lb/yr at a new or reconstructed source.	Reduce HAP emissions from the sum of all batch process vents within the process by ≥98 percent by weight; or reduce HAP emissions from the sum of all batch process vents within the process by ≥95 percent by weight using recovery devices; or control emissions from any batch vents within the process in accordance with any combination of the following, and reduce HAP emissions from the sum of all the remaining batch vents within the process by ≥98 percent by weight: reduce HAP emissions using a flare that meets the performance requiremetns specified in § 63.11(b), but you may not use a flare for halogenated vent streams; or reduce emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤20 ppmv, both corrected for supplemental gases as specified in § 63.2470(g); or reduce HAP emissions using a control device specified in § 63.2455(f).	For each vent stream that you control, route the vent stream through a closed-vent system to the control device; and comply with the work practice standards for closed-vent systems specified in Table 5 of this subpart; and comply with the emission limitations in Table 7 of this subpart, if you use a combustion device to control halogenated vent streams. Determine whether a vent stream is halogenated according to § 63.2460(b).

As required in §§ 63.2450(a)(3) and (f), 63.2460(c), 63.2495(b), and 63.2500(b)(1), you must meet each emission limitation and work practice standard in the following table that applies to your wastewater streams, waste management units, and liquid streams in open systems within an MCPU:

TABLE 3 TO SUBPART FFFF.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU

For each * * *	You must * * *	According to the following additional options and exceptions * * *
1. Waste management unit (i.e., wastewater tank, surface impoundment container, individual drain system, and oil-water separator) used to convey, store, treat, or dispose of an affected wastewater stream or residual.	Suppress HAP emissions by complying with the requirements specified in §§ 63.132(a)(2)(i) and 63.133 through 63.137; and route vent streams from the waste management units through a closed-vent system to any of the following: A flare that meets the performance requirements of § 63.11(b), except that you may not vent a halogenated vent stream to a flare, or a control device that reduces HAP emissions by ≥95 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≥20 ppmv; or a combustion device with a minimum residence time of 0.5 seconds at a minimum temperature of 760°C; or a control device specified in § 63.2455(f); and comply with the work practice standards for closed-vent systems specified in Table 5 of this subpart.	For any halogenated streams that are controlled with a combustion device, also comply with the emission limitations in Table 7 of this subpart. Determine whether a vent stream is halogenated according to § 63.2460(b); and you must correct outlet concentrations to account for supplemental gases using the procedures specified in § 63.2470(g); and you may not comply with the outlet concentration standard for surface impoundments and containers.
2. Affected wastewater stream at an existing source.	Treat the wastewater to remove or destroy HAP compounds listed in Table 9 of subpart G using one of the options specified in § 63.138(b)(1), (d), (e), (f), (g), (h), or (i).	The treatment options may be used in combination for different wastewater streams and/or for different compounds in the same wastewater streams, except where otherwise provided in § 63.138; you may use a series of treatment processes in accordance with the provisions in § 63.138(a)(7); and you need not cover and vent an open biological treatment process to a control device.
3. Affected wastewater stream at a new or reconstructed source.	Treat the wastewater to remove or destroy HAP compounds listed in Table 9 of subpart G using one of the options specified in § 63.138(b)(1), (d), (e), (f), (g), (h), or (i); and treat the wastewater to remove or destroy HAP compounds listed in Table 8 of subpart G using one of the options specified in § 63.138(c)(1), (d), (e), (f), (g), (h), or (i).	The treatment options may be used in combination for different wastewater streams and/or for different compounds in the same wastewater streams, except where otherwise provided in § 63.138; and you may use a series of treatment processes in accordance with the provisions in § 63.138(a)(7); and you need not cover and vent an open biological treatment process to a control device.
4. Residual removed from an affected wastewater stream.	Control HAP emissions by complying with the requirements in entry 1. of this table and in § 63.138(k).	Non applicable.
5. Maintenance wastewater containing HAP listed in Table 9 of subpart G of this part.	Develop and implement a maintenance wastewater plan according to § 63.105.	Non applicable.
6. Liquid stream in an open system within an MCPU.	Comply with the requirements in § 63.149, except: references in § 63.149 to a ''chemical manufacturing process unit'' means an ''MCPU as defined in § 63.2435(b)'' for the purposes of this subpart; and references to § 63.100(f) and references to subparts F, G, and H of this part do not apply for the purposes of this subpart; and when § 63.149 refers to the definition of new sources in 40 CFR 63.100(l)(1) or (2), the definitions for new and reconstructed sources in § 63.2440 apply for the purposes of this subpart; and references in § 63.149 to fuel gas systems do not apply for the purposes of this subpart; and when Table 35 of subpart G refers to § 63.139(c), references to entry d. in this table apply for the purposes of this subpart.	Non applicable.

As required in §§ 63.2450(a)(4), (f), and (i), 63.2495(b), and 63.2500(b)(1) and (c)(1)(vi), you must meet each emission limitation and work practice standard in the following table that applies to your storage tanks:

TABLE 4 TO SUBPART FFFF.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR STORAGE TANKS

For each * * *	You must * * *	And you must * * *
Storage tank with a capacity ≥10,000 gal storing material that has a maximum true vapor pressure of total HAP: ≥1.0 psia at an existing source; or ≥0.1 psia at a new or reconstructed source.	Route emissions through a closed-vent system to either: a control device that reduces HAP emissions by ≥95 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration less than or equal to 20 ppmv and an outlet hydrogen halide and halogen concentration less than or equal to 20 ppmv, or a flare that meets the performance requirements specified in §63.11(b); or a control device specified in §63.2455(f); or operate and maintain either an internal floating roof or an external floating roof designed, operated, inspected, and repaired as specified in §63.1063(a) through (e); or vapor balance according to §63.1253(f), except that: the references to §§63.1255(g)(4)(i) through (iv), 63.1257(c), 63.1258, §63.1259, and 63.1260 refer to §63.1024(f)(1) through (3), Table 14 of this subpart, Table 19 of this subpart, §63.2525, and §63.2520, respectively; and the 90 percent control requirement in §63.1253(f)(6)(i) means 95 percent for the purposes of this subpart.	Comply with the work practice standards for closed-vent systems specified in Table 5 of this subpart.

As required in §§63.2450(a)(5) and (f), 63.2495(b), and 63.2505(a)(3), you must meet each work practice standard in the following table that applies to your equipment leaks, closed-vent systems, and heat exchange systems:

TABLE 5 TO SUBPART FFFF OF PART 63.—WORK PRACTICE STANDARDS FOR EQUIPMENT LEAKS, CLOSED-VENT SYSTEMS, AND HEAT EXCHANGE SYSTEMS

For each * * *	You must * * *
1. Piece of equipment that is in organic HAP service and is not described in §63.1019(c) through (e).	Comply with the provisions in §§63.1022 and 63.1024 through 63.1037 (except §63.1022(b)(5)).
2. Piece of equipment that is in organic HAP service <300 hr/yr	Identify the equipment as specified in §63.1022(b)(5).
3. Closed-vent system that is used to route emissions to a control device that is used to comply with an emission limitation or work practice standard in Tables 1 through 4 or 6 of this subpart.	Conduct annual inspections, repair leaks, and maintain records as specified in §63.983(b), (c), and (d).
4. Closed-vent system that contains a bypas line that could divert a vent stream away from a control device used to comply with an emission limitation or work practice standard in Tables 1 through 4 and 6 of this subpart, except equipment such as low-leg drains, high bleed points, analyzer vents, open-ended valves or lines, rupture disks, and pressure relief valves needed for safety purposes.	Install, calibrate, maintain, and operate a flow indicator that determines whether vent stream flow is present. The flow indicator must be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere, and it must indicate either the presence of flow or lack of flow at least once every 15 minutes; or secure the bypass line valve in the closed position with a car seal or lock and key configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.
5. Heat exchange system that cools process equipment or materials in an MCPU.	Monitor and repair the heat exchange system according to §63.104(a) through (e), except that references in §63.104 to ''chemical manufacturing process units'' mean or materials in ''MCPU'' for the purposes of this subpart, and references an MCPU to §63.100 do not apply for the purposes of this subpart.

As required in §63.2450(a)(6) and (f), you must meet each emission limitation and work practice standard in the following table that applies to your transfer operations:

TABLE 6 TO SUBPART FFFF.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For each * * *	You must * * *	And you must * * *
Transfer operation for bulk loading of product or isolated intermediate with throughput ≥0.65 million liters/yr and a HAP partial pressure ≥1.5 psia.	Use a vapor balancing system designed and operated to collect displaced emissions and route them to: the storage tank from which the liquid being loaded originated; or another storage tank connected to a common header, or compress and route to a process where the HAP in the emissions predominantly meet one of, or a combination of, the following ends: recycled and or consumed in the same manner as a material that fulfills the same function in that process; transformed by chemical reaction into materials that are not organic HAP, incorporated into a product; and/or recovered; or route emission stream through a closed-vent system to: a control device that reduces HAP emissions by ≥98 percent by weight; or a control device that reduces emissions to outlet total organic HAP or TOC concentrations ≤20 ppmv and outlet hydrogen halide and halogen concentrations ≤20 ppmv, both corrected for supplemental gases as specified in § 63.2470(g); or a flare that meets the performance requirements of § 63.11(b), except that you may not vent halogenated vent streams to a flare; or a control device specified in § 63.2455(f).	Design and operate each vapor collection system such that HAP collected at one loading arm will not pass through another loading arm to the atmosphere; and prevent pressure relief devices from opening during loading; and comply with work practice standards for closed-vent systems specified in Table 5 of this subpart; and for any halogenated streams that are controlled with a combustion device, you must also comply with the emission limitations in Table 7 of this subpart; and vapor collection equipment for tank trucks and railcars must be compatible with the transfer operation's vapor collection system.

As required in §§ 63.2450(a)(7) and (f) and 63.2495(b), you must meet each emission limitation in the following table that applies to your halogenated vent streams that are controlled with a combustion device:

TABLE 7 TO SUBPART FFFF.—EMISSION LIMITATIONS FOR HALOGENATED VENT STREAMS THAT ARE CONTROLLED WITH A COMBUSTION DEVICE

For each * * *	You must * * *
1. Halogenated vent stream from a batch process vent, waste management unit, or transfer operation.	Use a halogen reduction device after the combustion device to reduce hydrogen halides and halogens by ≥95 percent by weight or to a concentration ≤20 ppmv; or use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to a concentration ≤20 ppmv.
2. Halogenated vent stream from a continuous process vent.	Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halides and halogens by ≥99 percent by weight or to ≤0.45 kg/hr; or use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

As required in §§ 63.2450(e) and (f), 63.2480(b), 63.2500(c)(7), and 63.2505(a)(i)(c)(1), you must meet each operating limit in the following table that applies to your control devices, recovery devices, and wastewater treatment units:

TABLE 8 TO SUBPART FFFF.—OPERATING LIMITS AND WORK PRACTICE STANDARDS FOR CONTROL DEVICES, RECOVERY DEVICES, AND WASTEWATER TREATMENT UNITS

For each * * *	With inlet HAP levels * * *	You must * * *
1. Water scrubber	≥1 ton/yr	Maintain the daily or block average scrubber liquid flow rate or pressure drop at or above the value established during the initial compliance determination.
2. Caustic scrubber	≥1 ton/yr	Maintain the daily or block average scrubber liquid flow rate or pressure drop at or above the value established during the initial compliance determination; and maintain the daily average pH of the scrubber effluent at or above the value established during the initial compliance determination.
3. Condenser	≥1 ton/yr	Maintain the daily or block average condenser outlet gas temperature at or below the value established during the initial compliance determination.

TABLE 8 TO SUBPART FFFF.—OPERATING LIMITS AND WORK PRACTICE STANDARDS FOR CONTROL DEVICES, RECOVERY DEVICES, AND WASTEWATER TREATMENT UNITS—Continued

For each * * *	With inlet HAP levels * * *	You must * * *
4. Regenerative carbon adsorber	≥1 ton/yr	For each regeneration cycle, maintain the regeneration frequency, temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and regeneration stream flow rate within the operating levels established during the initial compliance determination; and you conduct a check for bed poisoning in accordance with manufacturer's specifications at least once per year.
5. Thermal incinerator	≥1 ton/yr	Maintain the daily or block average temperature of gases exiting the combustion chamber at or above the value established during the initial compliance determination.
6. Catalytic incinerator	≥1 ton/yr	Maintain the daily or block average temperature of the gas stream immediately before the catalyst bed at or above the value established during the initial compliance determination; and conduct an annual catalyst test, or, once per quarter, verify that the temperature difference across the catalyst bed under the same conditions as in the initial compliance determination is no lower than 90 percent of the value established during the initial compliance determination.
7. Process heaters and boilers for which the vent streams are not introduced with the primary fuel or the design heat input capacity is ≤44 MW.	≥1 ton/yr	Maintain the daily or block average temperature of the gases exiting the combustion chamber at or above the value established during the initial compliance determination.
8. Any control or recovery device	<1 ton/yr	Follow the applicable procedures described in your precompliance report, according to § 63.2470(j), for demonstrating that the control device is operating properly.
9. Design steam stripper	At any level	Maintain the daily or block average steam-to-wastewater ratio ≥0.04 kg/liter, wastewater feed temperature or column temperature ≤95°C, and wastewater loading ≤67,100 liters per hour per square meter.
10. Biological treatment unit	At any level	Maintain the TSS, BOD, and biomass concentration established in your discharge permit.
11. Nonbiological wastewater treatment unit, except for a design steam stripper.	At any level	Maintain the appropriate parameters within levels specified in your precompliance report and approved by the permitting authority.

As required in § 63.2470(c), you must conduct performance tests in accordance with the requirements in the following table:

TABLE 9 TO SUBPART FFFF.—REQUIREMENTS FOR PERFORMANCE TESTS

For each * * *	You must * * *	Using * * *	According to the following requirements * * *
1. Vent stream	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A, § 63.7(d)(1)(i).	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
2. Vent stream	Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to part 60 of this chapter.	Non applicable.
3. Vent stream	Conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A to part 60 of this chapter.	Non applicable.
4. Vent stream	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Non applicable.

TABLE 9 TO SUBPART FFFF.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each * * *	You must* * *	Using * * *	According to the following requirements * * *
5. Vent stream controlled in a non-combustion device, except as specified in (7) and (8) of this table.	a. Measure percent reduction of organic HAP or TOC, or	i. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14), or.	Measure inlet and outlet mass emissions and calculate the overall percent reduction of organic HAP according to the procedures in § 63.2470(c)(6), and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(14).
		ii. Method 25A in appendix A to part 60 of this chapter.	Measure inlet and outlet mass emissions and calculate the overall percent reduction of TOC according to the procedures in § 63.2470(c)(7).
	b. Measure total organic HAP or TOC outlet concentration.	i. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14), or.	Measure the outlet concentration of each organic HAP present in the inlet stream, report results as ppmv compound, and calculate the total organic HAP emission concentration according to the procedures in sections § 63.2470(c)(8), and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(14).
		ii. Method 25A in appendix Ato part 60 of this chapter.	Measure the outlet concentration of TOC and report the results as ppmv carbon according to the procedures in section 63.2740(c)(9).
6. Vent stream controlled in a combustion device, except as specified in (g) and (h) of this table.	a. Measure percent reduction of organic HAP or TOC, or	i. Method 25/Method 25A in appendix A to part 60 of this chapter, or	Measure inlet and outlet mass emissions, as carbon, and calculate the overall percent reduction of TOC according to the procedures in § 63.2470(c)(10).
		ii. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14).	Measure the inlet and outlet mass emissions for each organic HAP and calculate the overall percent reduction according to the procedures in § 63.2470(c)(6). Note: The total outlet mass emissions is determined for the each organic HAP identified and quantified in the inlet gas stream, and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(14).
	b. Measure total organic HAP or TOC outlet concentration.	i. Method 25A in appendix A to part 60 of this chapter, or	Measure the outlet concentration on an as carbon basis according to the procedures in § 63.2470(c)(9).
		ii. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14).	Measure the outlet concentration of each organic HAP contained in the inlet stream to the combustion device and calculate the total organic HAP concentration of the outlet emissions according to the procedures in § 63.2470(c)(8), and if you use ASTM D6420–99, comply with the requirements in § 63.2470(c)(14).
7. Vent stream	Measure formaldehyde concentration or percent reduction.	Method 316 or 320 in appendix A of this part.	The procedures specified in § 63.2470(c)(12).
8. Vent stream	Measure carbon disulfide concentrations or percent reduction.	Method 18 or 15 in appendix A to part 60 of this chapter.	The procedures specified in § 63.2470(c)(13).
9. Vent stream	Measure hydrogen halide and halogen concentrations.	Method 26 or 26A in Appendix A to part 60 of this chapter.	According to the procedures in § 63.2470(c)(11).

TABLE 9 TO SUBPART FFFF.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each * * *	You must* * *	Using * * *	According to the following requirements * * *
10. Wastewater samples	a. Measure HAP concentration	i. Method 305 in appendix A of this part, or	Comply with the procedures in §63.1257(b)(10)(v).
		ii. Method 624, 625, 1624, or 1625 in appendix A to part 136 of this chapter, or	Comply with the procedures in §63.1257(b)(10)(v).
		iii. Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992, or	As an alternative, you may use any more recent, updated version of Method 8260 or 8270 that we publish. To use these methods, you must maintain a formal quality assurance program consistent with either section 8 of Method 8260 or Method 8270, and this program must include the following elements related to measuring the concentrations of volatile compounds: documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps; and -documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis; and -measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the material source before or during sampling with compounds having similar characteristics to the target analyte.
		iv. Other EPA Methods, or	Use procedures specified in the method, validate the method using the procedures in §63.1257(b)(10)(iii) (A) or (B), and comply with the procedures in §63.1257(b)(10)(v).
		v. Methods other than an EPA Method.	Use procedures specified in the method, validate the method using the procedures in §63.1257(b)(10)(iii) (A) and comply with the procedures in §63.1257(b)(10)(v).
11. Vent stream controlled using a flare.	Determine compliance with flare requirements.	Use methods in §63.11(b)	Non applicable.

As required in §§63.2465(a), (b), and (c), 63.2470(a), and 63.2480(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your continuous process vents as specified in the following table:

TABLE 10 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Each continuous process vent with a TRE: ≤2.6 at an existing source; or ≤5.0 at a new or reconstructed source.	a. Vent emissions through a closed-vent system to a flare that meets the performance requirements of §63.11(b), or	You conduct an initial flare compliance assessment as specified in §§63.987(b)(3) and 63.997; and the visible emission, net heating value, and exit velocity meet the requirements specified in §63.11(b)(4), (6), and (7).

TABLE 10 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR CONTINUOUS PROCESS VENTS—Continued

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
	b. Vent emissions through a closed-vent system to a control device that reduces HAP emissions by ≤98 percent by weight, or	For a control device, you conduct a performance test as specified in §63.997 (except §63.997(e)(1)(iii) does not apply). Alternatively, for a condenser used as a control device, you estimate uncontrolled emissions according to §63.1257(d)(2) and controlled emissions according to §63.1257(d)(3)(i)(B) using the results of continuous direct measurement of the condenser outlet gas temperature; and the performance test (or design evaluation for a condenser) shows the control device reduces the organic HAP emissions by ≤98 percent by weight; and during the performance test (or design evaluation for a condenser), you establish operating limits for the control devices specified in Table 8 of this subpart, as applicable, according to §63.2470(d), (e), or (f). The limit may be based on a previous performance test that meets the requirements specified in §63.997(b)(1); and you have a record of how you determined the control device operating limits.
	c. Vent emissions through a closed-vent system to a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and reduces hydrogen halide and halogen emissions to an outlet concentration ≤20 ppmv.	You conduct a performance test as specified in §63.997(e) (except §63.997(e)(1)(iii) does not apply); and the performance test shows the control device reduces the emissions to outlet total organic HAP or TOC concentrations ≤20 ppmv and outlet hydrogen halide and halogen concentrations ≤20 ppmv, both corrected for supplemental gases according to §63.2470(g); and during the performance test, you establish operating limits for the control devices specified in Table 8 of this subpart, as applicable, according to §63.2470(e) or (f); and you have a record of how you established the operating limits.
2. Each continuous process vent with a TRE: <2.6 at an existing source; or <5.0 at a new or reconstructed source.	Use a recovery device to maintain TRE above the minimum threshold.	You establish operating limits for the recovery device specified in Table 8 of this subpart, as applicable; and you have a record of how you established the recovery device operating limits.

As required in §§63.2465(a), (b), and (c), 63.2470(a), and 63.2480(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your batch process vents as specified in the following table:

TABLE 11 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS

For * * *	For the following standard * * *	
1. Batch process vents within a process with total HAP emissions: <10,000 lb.yr at an existing source; or <3,000 lb/yr at a new or reconstructed source.	Maintain emissions below the applicable annual mass limit threshold.	You determine uncontrolled HAP emissions for each batch in accordance with §63.1257(d)(2)(i) and (ii); and you estimate the number of batches to be produced annually and show the estimated emissions are below the applicable annual mass limit.
2. Batch process vents within a process with total HAP emissions; ≤10,000 lb/yr at an existing source; or ≥3,000 lb/yr at a new or reconstructed source.	a. Route emissions through a closed-vent system to a flare that meets the performance requirements specified in §63.11(b), or	You conduct an initial flare compliance assessment as specified in §§63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in §63.11(b)(4), (6), and (7).

TABLE 11 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS—Continued

For * * *	For the following standard * * *	
	b. Route emissions through a closed-vent system to a control device that reduces emissions to an outlet total organic HAP or TOC ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤20 ppmv, or	You determine total uncontrolled emissions to the control device in accordance with § 63.1257(d)(2)(i) and (ii), except as specified in § 63.2470 (b); and you conduct a performance test using the applicable test methods in Table 9 of this subpart and under the conditions specified in § 63.1257(b)(8) that shows the control device reduces the emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and outlet hydrogen halide and halogen concentration ≤20 ppmv, both corrected for supplemental gases; and during the performance test, you establish operating limits for the control devices specified in Table 8 of this subpart, as applicable, in accordance with the requirements specified in § 63.2470(e) or (f); and you have a record of how you established the operating limits.
	c. Route emissions through a closed-vent system(s) to: a control device(s) that reduces HAP emissions from the sum of all vents by ≥98 percent by weight; or a recovery device(s) that reduces HAP emissions from the sum of all vents by ≥95 percent by weight, or	You determine total uncontrolled emissions to the control device by determining the uncontrolled emissions from each vent routed to the control device in accordance with the procedures specified in § 63.1257(d)(2)(i) and (ii), except as specified in § 63.2470(b); and you determine controlled emissions for each batch process vent based on the results of a performance test or design evaluation conducted according to § 63.1257(d)(3); and based on the uncontrolled and controlled emissions estimates, you determine the control device reduces HAP emissions from the sum of all vents by ≥98 percent by weight, or the recovery device reduces emissions by ≥95 percent by weight; and during the performance test or design evaluation, you establish operating limits for the control devices or recovery devices specified in Table 8 of this subpart in accordance with § 63.2470(d), (e), or (f); and you have a record of how you determined the operating limits.
	d. Route emissions through a closed-vent system to a control device specified in § 63.2455(f).	You document in your notification of compliance status that you route emissions to a control device specified in § 63.2455(f).

As required in §§ 63.2465(a), (b), and (c), 63.2470(a), and 63.2480(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your wastewater streams, waste management units, and liquid streams in open systems within an MCPU as specified in the following table:

TABLE 12 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Waste management unit	Install a fixed roof, floating roof, cover, or Enclosure to supppress emissions.	You design and install the fixed roofs, floating roofs, covers, and enclosures to meet the requirements specified in §§ 63.133 through 63.137; and you conduct suppress an initial inspection of the waste emissions management unit for improper work practices and control equipment failures in accordance with the requirements specified in §§ 63.133 through 63.137 and 63.143(a).

TABLE 12 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU—Continued

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
2. Vent stream from a waste management unit	a. Vent emissions through a closed-vent system to: a control device that reduces organic HAP emissions by ≥95 percent by weight or to an outlet total organic HAP or TOC concentration ≤20 ppmv; or a combustion device with a minimum temperature of 760°C, or	You conduct either a performance test in accordance with the requirements specified in § 63.145(i) (except when § 63.145(i)(6) and (9) refer to the concentration corrections for 3 percent O_2, the correction for supplemental gases in § 63.2470(g) apply for the purposes of this subpart) or a design evaluation in accordance with the requirements specified in § 63.139(d)(2). If the control device will be operated over a range of conditions, you are not required to test over the entire range. In such cases, you may supplement the performance test results with modeling and/or engineering assessments; and the performance test or design evaluation shows the organic HAP emissions are reduced by ≥95 percent by weight, or the TOC emissions are reduced to an outlet concentration, corrected to account for supplemental gases, of ≤20 ppmv; and during the design evaluation or performance test, you establish operating limits for the control devices in Table 8 of this subpart, as applicable, according to § 63.2470(d), (e), or (f); and you have a record of how you established the operating limits during the design evaluation or performance test.
	b. Vent emissions through a closed-vent system to a flare that meets the performance requirements of § 63.11(b)	You conduct an initial flare compliance assessment as specified in §§ 63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in § 63.11(b)(4), (6), and (7).
	c. Route emissions through a closed-vent system to a control device specified in § 63.2455(f).	You document in your notification of compliance status that you route emissions to a device specified in § 63.2455(f).
3. Affected wastewater stream	a. Treatment options in § 63.138(b), (c), (e), (f), (g) or (i), or	You conduct either a performance test or a design evaluation in accordance with the requirements specified in § 63.138(j); and the performance test or design evaluation shows the reduction required by § 63.138(b), (c), (e), (f), (g), or (i), as appropriate, is achieved; and during the performance test or design evaluation for a biological treatment process, you establish operating limits for TSS, BOD, and biomass concentration in accordance with your discharge permit; and for a nonbiological treatment unit you establish appropriate operating limits described and approved in your precompliance report; and you have a record of how you established the operating limits during the design evaluation or performance test.
	b. Treatment in a design steam stripper (i.e., § 63.138(d)) or a treatment unit specified in § 63.2455(f).	You document in your notification of compliance status that you treat wastewater in a design steam stripper or a in treatment unit in § 63.2455(f).

TABLE 12 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN AN MCPU—Continued

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
4. Residual removed from an affected wastewater stream.	Control emissions	You comply with the requirements in entry 1. of this table for all waste management units used to convey, store, treat, or dispose of the residual; and You comply with one or more of the following: the requirements on entry 3. of this table for each residual that you treat in accordance with the requirements specified in §63.138(k)(3); install equipment or establish procedures to recycle the residual to a production process, sell it for recycling, or return it to the treatment process; you document in the notification of compliance status that you are treating the residual in a unit under §63.2455(f).
5. Maintenance wastewater stream	Develop and implement a maintenance wastewater plan.	You developed the plan and have it available onsite for inspection at any time after the compliance date.

As required in §§63.2465(a), (b), and (c), 63.2470(a), and 63.2480(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your storage tanks as specified in the following table:

TABLE 13 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR STORAGE TANKS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Each affected storage tank	a. Operate and maintain a floating roof, or	You have a record of the vessel dimensions and capacity and identification of the liquid stored as specified in §63.1065(a); and you inspect an IFR before initial filling and inspect an EFR within 90 days of initial filling.
	b. Vent emissions through a closed-vent system to a control device that reduces HAP emissions by ≥95 percent by weight, or	You conduct a design evaluation or performance test in accordance with the requirements specified in §63.985(b); and the performance test or design evaluation shows the control device reduces HAP emissions by ≥95 percent by weight; and during the performance test or design evaluation, you establish operating limits for the control devices specified in Table 8 of this subpart, as applicable, according to §63.2470(d), (e), or (f); and you have a record of how you established the operating limits.
	c. Vent emissions through a closed-vent system to a flare that meets the performance requirements of §63.11(b), or	You conduct an initial flare compliance assessment as specified in §§63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in §63.11(b)(4), (6), and (7).
	d. Vapor balance	You document in the notification of compliance status that you are complying by vapor balancing and certify that the pressure relief device setting on the storage tank is ≥2.5 psig on the compliance date; and for the owner or operator of a reloading or cleaning facility, you: submit the written certification required by §63.1253(f)(7)(i); and if you use a closed-vent system and control device to control emissions, you comply with entry 1.b. of this Table.

As required in §§63.2465(a), (b), and (c), 63.2470(a), 63.2480(a), and 63.2505(b)(6), you must demonstrate initial compliance with each work practice standard that applies to your equipment leaks, closed-vent systems, and heat exchange systems as specified in the following table:

TABLE 14 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS FOR EQUIPMENT LEAKS, CLOSED-VENT SYSTEMS, AND HEAT EXCHANGE SYSTEMS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Each piece of equipment in organic HAP service and not described in §63.1019(c) through (e).	Comply with §§63.1022 and 63.1024 through 63.1037.	You implemented an LDAR program by the compliance date.
2. Each piece of equipment in organic HAP service <300 hr/yr.	Identify the equipment as specified in §63.1022(b)(5).	You create a list with the required identification record by the compliance date.
3. Closed-vent system		You conduct an initial inspection of the closed-vent system and maintain records in accordance with §63.983(b) and (c) by the compliance date; and you prepare a written plan for inspecting unsafe-to-inspect and difficult-to-inspect equipment in accordance with §63.983(b) and (c) by the compliance date; and you repair any leaks and maintain records in accordance with §63.983(d).
4. Closed-vent system with a bypass line that could divert vent streams away from a control device.		You have a record documenting that you either installed a flow indicator or that you secured the bypass line valve in accordance with entry 4. in Table 5 of this subpart.
5. Heat exchange system used to cool process equipment or materials in an MCPU.	Monitor for and repair leaks	You determine that the heat exchange system is exempt from monitoring requirements because it meets one of the conditions in §63.104(a)(1) or through (6), and you document this finding in your notification of compliance status; or if your heat exchange system is not exempt, you either: identify in your notification of compliance status the HAP or other representative substance that you will monitor; or prepare and maintain a monitoring plan containing the information required by §63.104(c)(1)(i) through (iv) that documents the procedures you will use to detect leaks by monitoring surrogate indicators of the leak.

As required in §§63.2465(a), (b), and (c), 63.2470(a), and 63.2480(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your transfer operations as specified in the following table:

TABLE 15 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Transfer operations	a. Vapor balance, or	You document in the notification of compliance status that you are complying with vapor balancing.
	b. Route emissions through a closed-vent system to a flare that meets the performance requirements of §63.11(b), or	You conduct an initial flare compliance assessment as specified in §§63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet requirements specified in §63.11(b)(4), (6), and (7).
	c. Route emissions through a closed-vent system to a control device that reduces HAP by ≥98 percent by weight or to an outlet TOC concentrations ≤20 ppmv and outlet hydrogen halides and halogen concentration ≤20 ppmv, or	You conduct a design evaluation or performance test according to the requirements in §63.985(b); and the performance test or design evaluation shows the TOC or total organic HAP emissions are reduced by ≥98 percent by weight, or to outlet concentration ≤20 ppmv as TOC and ≤20 ppmv of hydrogen halides and halogens both corrected for supplemental gases in accordance with §63.2470(g); and during the performance test or design evaluation, you establish operating limits for the control devices specified in Table 8 of this subpart, as applicable, in accordance with §63.2470(d), (e), and (f); and you have a record of how you determined the operating limits.

TABLE 15 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS—Continued

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
	d. Route emissions through a closed-vent system to a control device specified in §63.2455(f).	You document in your notification of compliance status that you route emissions to a device specified in §63.2455(f).

As required in §§63.2465(a), (b), and (c), 63.2470(a), 63.2480(a), and 63.2505(b)(5), you must demonstrate initial compliance with each emission limitation that applies to your halogenated vent streams controlled with a combustion device as specified in the following table:

TABLE 16 TO SUBPART FFFF.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HALOGENATED VENT STREAMS CONTROLLED WITH A COMBUSTION DEVICE

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Halogenated vent stream from a continuous process vent.	a. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halides and halogen, or	You conduct a performance test according to the procedures specified in §63.997; and the performance test shows the hydrogen halide and halogen emissions are reduced by at least 99 percent by weight or to less than 0.45 kg/hr; and you establish operating limits for the halogen reduction device during the performance test in accordance with §63.2470(e) or (f); and you have a record of how you determine the operating limits.
	b. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to <0.45 kg/hr.	You determine the halogen atom mass emission rate prior to the combustion device to be <0.45 kg/hr based on an engineering assessment or performance test conducted in accordance with the requirements specified in §63.2462(b)(1); and you establish operating limits for the halogen reduction device during the engineering assessment or performance test in accordance with §63.2470(d), (e), or (f); and you have a record of how you determined the operating limit for the halogen reduction device.
2. Halogenated vent stream from a batch process vent, waste management unit, or transfer operation.	a. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halides and halogen, or	You conduct a performance test according to the procedures specified in §63.997; and the performance test shows the hydrogen halide and halogen emissions are reduced by at least 95 percent by weight or to less than 20 ppmv; and you establish operating limits for the halogen reduction device during the performance test in accordance with §63.2470(e) or (f); and you have a record of how you determine the operating limits.
	b. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to <20 ppmv.	You determine the halogen atom mass emission rate prior to the combustion device to be ≤20 ppmv based on an engineering assessment or performance test in accordance with §63.2462(b)(2); and you establish operating limits for the halogen reduction device during the engineering assessment or performance test analysis in accordance with §63.2470(d), (e), or (f); and you have a record of how you determined the operating limit for the halogen reduction device.

As required in §§63.2490(a) and 63.2525(c), you must demonstrate continuous compliance with each emission limitation that applies to you as specified in the following table:

TABLE 17 TO SUBPART FFFF.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For * * *	For the following emission limit * * *	You must demonstrate continuous compliance by * * *
1. Each vent stream controlled with a condenser.	Percent reduction, outlet concentration, or TRE limit.	Collecting the condenser outlet temperature data according to §63.2475(b); and reducing condenser outlet temperature data to daily or block averages according to calculations in §63.2475(b); and maintaining the daily or block average condenser outlet temperature no higher than the level established during the initial performance test or design evaluation.
2. Batch process vents within processes with uncontrolled total HAP emissions: <10,000 lb/yr at an existing source; or <3,000 lb/yr at a new or reconstructed source.	Maintain the emissions below the applicable annual mass emission limits.	Calculate daily a 365-day rolling summation of HAP emissions.

As required in §§63.2490(a), 63.2505(c)(1)(iv)(B), and 63.2525(c), you must demonstrate continuous compliance with each operating limit that applies to you as specified in the following table:

TABLE 18 TO SUBPART FFFF.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
1. Each thermal incinerator that is used to control an emission stream subject to an emission limitation and that has inlet HAP emissions ≥1 ton/yr.	Temperature of gases exiting the combustion chamber.	Collecting the temperature data according to §63.2475(b); and reducing the temperature data to daily or block averages according to calculations in §63.2475(b); and maintaining the daily or block average temperature of gases exiting the combustion chamber no lower than the value established during the initial performance test or design evaluation.
2. Each catalytic incinerator that is used to control an emission stream subject to an emission limitation and that has inlet HAP emissions ≥1 ton/yr.	Temperature of the gas stream immediately before the catalyst bed and, if applicable, the temperature difference across the catalyst bed.	Collecting the temperature data according to §63.2475(b); and reducing the inlet temperature data to daily or block average according to calculations in §63.2475(b); and maintaining the daily or block average temperature of the gas stream immediately before the catalyst bed no lower than the value established during the initial performance test or design evaluation; and if applicable, maintaining the quarterly reading of the temperature difference across the catalyst bed no lower than 90 percent of the value established during the initial compliance determination.
3. Each boiler or process heater that is used to control an emission stream that is subject to an emission limitation, that has inlet HAP emissions ≥1 ton/yr, and for which the vent streams are not introduced with the primary fuel or the design heat input capacity is <44 MW.	Temperature of the gases exiting the combustion chamber.	Collecting the temperature data according to §63.2475(b); and reducing the temperature data to daily or block averages according to calculations in §63.2475(b); and maintaining the daily or block average temperature of the gas stream exiting the combustion chamber no lower than the value established during the initial performance test or design evaluation.
4. Each regenerative carbon adsorber that has inlet emission streams containing ≥1 ton/yr of HAP.	The regeneration frequency, temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and the regeneration stream flow rate.	Collecting the data for each regeneration cycle; and conducting inspections, compliance checks, and calibrations according to §63.2475(b)(4); and for each regeneration cycle, maintaining the regeneration temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and the regeneration stream flow rate within the operating levels established during the initial performance test or design evaluation.

TABLE 18 TO SUBPART FFFF.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For * * *	For the following operating limit * * *	You must demonstrate continuous compliance by * * *
5. Each water scrubber with inlet HAP emissions ≥1 ton/yr.	Scrubber liquid flow rate or pressure drop	Collecting the scrubber liquid flow rate or pressure drop data according to §63.2475(b); and reducing the flow rate or pressure drop data to daily or block averages according to §63.2475(b); and maintaining the daily or block average water scrubber flow rate or pressure drop no lower than the value established during the initial performance test or design evaluation.
6. Each caustic scrubber with inlet HAP emissions ≥1 ton/yr.	Scrubber liquid flow rate or pressure drop and pH of the scrubber effluent.	Collecting the scrubber liquid flow rate or pressure drop data according to §63.2475(b); and collecting the scrubber effluent pH data according to §63.2475(b); and reducing the scrubber liquid flow rate or pressure drop data to daily or block averages according to calculations in §63.2475(b); and reducing the scrubber effluent pH data to daily or block averages according to the calculations in §63.2475(b); and maintaining the daily or block average scrubber liquid flow rate or pressure drop, and the daily or block average scrubber effluent pH, no lower than the values established during the initial performance test or design evaluation.
7. Each control device with inlet HAP emissions <1 ton/yr for which you received approval to comply with operating limits different from those described in entries (a) through (f) of this table.	As identified in your precompliance report	Following the procedures in your approved precompliance report to verify on a daily or block basis that the control device is operating properly.
8. Each design steam stripper	Steam-to-wastewater ratio, wastewater temperature, and wastewater loading.	Collecting the steam mass flow rate, wastewater flow rate, and wastewater (or column operating) temperature data according to §63.2475(b); and reducing the data to daily or block averages according to §63.2475(b); and maintaining the steam-to-wastewater ratio ≥0.04 kg/liter, the wastewater temperature (or column operating temperature) ≥95°C, and the wastewater loading ≤67,100 liters per hour per square meter.
9. Each nonbiological treatment wastewater treatment unit, except a design steam stripper.	Parameters as approved by permitting authority.	Collecting and reducing data as specified by the permitting authority and maintaining parameter levels within the limits approved by the permitting authority.
10. Each biological treatment unit	TSS, BOD, and the biomass concentration	Collecting the data at the frequency approved by the permitting authority and using methods approved by the permitting authority; and maintaining the TSS, BOD, and biomass concentration within levels approved by the permitting authority.

As required in §§63.2490(a), 63.2505(c)(4), and 63.2525(c), you must demonstrate continuous compliance with each work practice standard that applies to you as specified in the following table:

TABLE 19 TO SUBPART FFFF.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
1. Install a floating roof on a storage tank	Conducting the inspections in §63.1063(d) at the frequency specified in §63.1063(c); and repairing any failures detected during the inspection as specified in §63.1063(e); and maintaining records of inspections, repairs, floating roof landings, and vessel dimensions and capacity as specified in §63.1065.

TABLE 19 TO SUBPART FFFF.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
2. Install emission suppression equipment for waste management units as specified in §§ 63.133 through 63.137.	Conducting semi-annual visual inspections of each fixed roof, cover, and enclosure for visible, audible, or olfactory indications of leaks as specified in §§ 63.133 through 63.137; and conducting inspections, repairing failures, and documenting delay or repair for each fixed roof, cover, and enclosure as specified in §§ 63.133 through 63.137 maintain records of failures and corrective actions; and for each floating roof installed on a wastewater tank, conducting inspections, repairing failures, and maintaining records as specified in entry 1. of this table for storage tanks.
3. Implement the LDAR requirements in §§ 63.1025 through 63.1037 ...	Performing the required monitoring on the required schedule, repairing leaks within the specified time period according to §§ 63.1025 through 63.1037; and keeping records according to § 63.1038(b).
4. Vent transfer operation emissions back to the process or originating vessel.	Conducting annual inspections, repairing leaks, and recording results in accordance with the requirements for closed-vent systems in entries (i) and (j) of this table.
5. Controlling emissions with a flare	Continuously monitoring for the presence of pilot flame as specified in § 63.987(c) and keeping records of the monitoring results as specified in § 63.998(a)(1)(ii) and (iii).
6. Controlling emissions with a nonregenerative carbon adsorber	Monitoring the operating time during which the carbon adsorber is used; and replacing the cannister within the time interval established during the initial compliance demonstration.
7. Inspect and repair heat exchange systems	Monitoring for HAP compounds, other substances, or surrogate indicators at the frequency specified in § 63.104(b) or (c), repairing leaks within the time period specified in § 63.104(d)(1), confirming that the repair is successful as specified in § 63.104(d)(2), following the procedures in § 63.104(e) if you implement delay of repair, and recording the results of inspections and repair according to § 63.104(f)(1).
8. Cover liquid streams in open systems within an MCPU	Complying with entry 2. of this table.
9. Inspect closed-vent systems	Conducting the inspections and maintaining records according to § 63.983(b) and (c) and repairing leaks according to § 63.983(d).
10. Monitor bypass lines in closed-vent systems	If using a flow indicator, ensuring that flow indicator readings are taken at least once every 15 minutes, maintaining hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during the hour, recording all periods when the vent stream is diverted from the control stream or the flow indicator is not operating; or if you secure the bypass line valve in the closed-position, maintain a record that the monthly visual inspection of the seal or closure mechanism has been done; and recording the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out.
11. Develop and implement maintenance wastewater plan	Implementing the procedures in the plan for each wastewater stream according to § 63.105(d), modifying and updating the procedures as needed according to § 63.105(c), and maintaining records of the plan and updates according to § 63.105(e).
12. Vapor balancing for storage tanks	Operating and monitoring the vapor balancing system as specified in § 63.1253(f)(1) through (5), maintaining a record of DOT certifications required by § 63.1253(f)(2), and maintaining a record of the pressure relief vent setting that shows it is ≥2.5 psig; and if you are the owner or operator of a reloading or cleaning facility, controlling emissions from reloading or cleaning as specified in § 63.1253(f)(6) and (7).
13. Conduct annual catalyst test for catalytic incinerators	Conducting a catalyst test once per year that shows the activity of the carbon is acceptable.

As required in § 63.2520(a) and (b), you must submit each report that applies to you on the schedule shown in the following table:

TABLE 20 TO SUBPART FFFF.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain * * *	You must submit the report * * *
1. Precompliance report	The information specified in § 63.2520(c); and if you comply with the pollution prevention standard, the demonstration summary specified in § 63.2495(f).	At least 6 months prior to the compliance date; or for new sources, with the application for approval of construction or reconstruction.
2. Compliance report	The information specified in § 63.2520(d)	Semiannually according to the requirements in § 63.2520(b).

TABLE 20 TO SUBPART FFFF.—REQUIREMENTS FOR REPORTS—Continued

You must submit a(n)	The report must contain * * *	You must submit the report * * *
3. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event, and	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

As specified in § 63.2540, the parts of the General Provisions that apply to you are shown in the following table:

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63

Citation	Subject	Brief description	Explanation
§ 63.1	Applicability	Initial applicability determination; Applicability after Standard established; Permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards ..	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; Circumvention, severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals.	Yes.
§ 63.6(a)	Applicability	General Provisions apply unless compliance extension; General Provisions apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; For section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; Correct malfunctions as soon as practicable; Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63—Continued

Citation	Subject	Brief description	Explanation
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and startup, shutdown, malfunction plan; Content of SSMP.	Yes.
§63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission limits.	Only for flares for which Method 22 observations are required as part of a flare compliance assessment.
§63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations; must conduct 180 days after first subject to rule.	Yes, except that §63.2465(a) specifies that you must conduct initial compliance demonstrations before the compliance date for existing sources in operation before the effective date.
§63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA Section 114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; Test plan approval procedures; Performance audit requirements; Internal and External QA procedures for testing.	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls batch process vents.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes, except that performance tests for batch process vents must be conducted under worst-case conditions as specified in §63.2470 and Table 11 to this subpart.
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; Compliance is based on arithmetic mean of three runs; Conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63—Continued

Citation	Subject	Brief description	Explanation
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; Must submit performance test data 60 days after end of test with the Notification of Compliance Status; Keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in § 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; Review of source operation and maintenance procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; Must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No. CMS requirements are specified in § 63.2485.
§ 63.8(c)(4)(i)–(ii)		COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Only for the alternative standard, but § 63.8(c)(4)(i) does not apply because the alternative standard does not require COMS.

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63—Continued

Citation	Subject	Brief description	Explanation
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No. This subpart FFFF does not contain opacity or VE limits.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements; Out-of-control periods.	Only for the alternative standard in § 63.2505.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-Control period, including reporting.	No, except for the alternative standard in § 63.2505.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Only for the alternative standard in § 63.2505.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Only for the alternative standard in § 63.2505, but § 63.8(e)(5)(ii) does not apply because the alternative standard does not require COMS. For existing sources, the performance evaluation must be completed prior to the compliance date, and the results must be included in the notification of compliance status.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes, except you may also request approval using the precompliance report.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Only for the alternative standard in § 63.2505.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1-hour averages computed over at least 4 equally spaced data points.	Only for the alternative standard in § 63.2505, except that the requirements for COMS do not apply because subpart FFFF has no opacity or VE limits, and § 63.8(g)(2) does not apply because data reduction requirements are specified in § 63.2475(a)(5).
§ 63.8(g)(5)	Data Reduction	Data that can't be used in computing averages for CEMS and COMS.	No. Data reduction procedures are specified in § 63.2485(b).
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup; Contents of each notification.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No. Subpart FFFF does not contain opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; Notification using COMS data; Notification that exceeded criterion for relative accuracy.	Only for the alternative standard in § 63.2505.

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63—Continued

Citation	Subject	Brief description	Explanation
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents; Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; When to submit to Federal vs. State authority.	Yes, except subpart FFFF has no opacity or VE limits, and § 63.2515(e). (1) specifies that the Notification of Compliance Status is due by the compliance date for parts of existing sources in operation prior to the effective date, and § 63.2515(e). (2) specifies that the Notification of Compliance Status is due within 240 days after the compliance date for all other affected sources.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information ..	Must submit within 15 days after the change.	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; When to submit to Federal vs. State authority; Procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; Keep all records readily available; Keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); Occurrence of each malfunction of air pollution equipment; Maintenance on air pollution control equipment; Actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi), (x), and (xi)	CMS Records	Malfunctions, inoperative, out-of-control; Calibration checks; Adjustments, maintenance.	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emission limitations; Performance test, performance evaluation, and visible emission observation results; Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Only for the alternative standard in § 63.2505.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6),(9)–(15)	Records	Additional Records for CMS	Only for the alternative standard in § 63.2505.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS (now defined as deviations).	No. Recordkeeping requirements are specified in § 63.2525.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No. Subpart FFFF does not contain opacity or VE limits.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.

TABLE 21 TO SUBPART FFFF.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART FFFF OF PART 63—Continued

Citation	Subject	Brief description	Explanation
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; Written copy of performance evaluation; 3 copies of COMS performance evaluation.	Only for the alternative standard, but § 63.10(e)(2)(ii) does not apply because the alternative standard does not require COMS.
§ 63.10(e)(3)	Reports	Excess Emission Reports	No. Reporting requirements are specified in § 63.2520.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No. Reporting requirements are specified in § 63.2520.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations); Provision to request semiannual reporting after compliance for one year; Submit report by 30th day following end of quarter or calendar half; If there has not been an exceedance or excess emission (now defined as deviations), report contents is a statement that there have been no deviations.	No. Reporting requirements are specified in § 63.2520.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5)–(13), § 63.8(c)(7)–(8).	No. Reporting requirements are specified in § 63.2520.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations); Requires all of the information in § 63.10(c)(5)–(13), § 63.8(c)(7)–(8).	No. Reporting requirements are specified in § 63.2520.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	No. Subpart FFFF does not contain opacity or VE limits.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive.	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards.	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference.	Yes.
§ 63.15	Availability of Information	Public and confidential information.	Yes.

3. Part 63 is amended by adding subpart HHHHH to read as follows:

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing

Sec.

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing

What This Subpart Covers

§ 63.7980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.7985 Am I subject to the requirements in this subpart?

(a) You are subject to the requirements in this subpart if you own or operate miscellaneous coating manufacturing operations, as defined in paragraph (b) of this section, that meet the conditions specified in paragraphs (a)(1) through (4) of this section:

(1) Are located at or are part of a major source of hazardous air pollutants (HAP) emissions, as defined in section 112(a) of the CAA;

(2) Manufacture coatings, including inks, paints, or adhesives described by SIC codes 285 or 289 or NAICS Code 3255;

(3) Process, use, or produce HAP; and

(4) Are not part of an affected source under another subpart of this part 63.

(b) Miscellaneous coating manufacturing operations include the facilitywide collection of equipment described in paragraphs (b)(1) through (5) of this section that is used to manufacture coatings described in paragraph (a)(2) of this section. Miscellaneous coating manufacturing operations also include cleaning operations.

(1) Process vessels.

(2) Storage tanks for feedstocks, recovered solvents, and products. You must assign storage tanks to the miscellaneous coating manufacturing operations according to the procedures described in § 63.7990(c).

(3) Equipment in open systems that is used to convey or store water containing the same HAP concentration as wastewater.

(4) Components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems.

(5) Ancillary equipment such as waste management units and transfer operations.

(c) The requirements for miscellaneous coating manufacturing sources in this subpart do not apply to operations described in paragraphs (c)(1) through (3) of this section.

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA.

(2) Ancillary equipment such as boilers and incinerators (only those not used to comply with the emission limitations in § 63.8000), chillers and refrigeration systems, and other equipment that is not directly involved in the manufacturing of a coating (i.e., it operates as a closed system, and materials are not combined with materials used to manufacture the coating).

(3) All equipment associated with a coating process for which the HAP concentration in the process vessel is <5 percent by weight.

§ 63.7990 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing miscellaneous coating manufacturing affected source.

(b) The miscellaneous coating manufacturing affected source is the miscellaneous coating manufacturing operations as defined in § 63.7985(b).

(c) You must consider storage tanks to be part of the miscellaneous coating manufacturing operations if either the input to the storage tank from the coating process vessels (either directly or through another storage tank assigned to the miscellaneous coating manufacturing operations) is greater than or equal to the input from any other equipment, or the output from the storage tank to the coating process vessels (either directly or through another storage tank assigned to the miscellaneous coating manufacturing operations) is greater than or equal to the output to any other equipment. If

the greatest input to and/or output from a shared storage tank is the same for both miscellaneous coating manufacturing and other uses, you may assign the storage tank to either the miscellaneous coating manufacturing operations or to the process unit associated with the other uses. If the use varies from year to year, then you should base the determination on the utilization that occurred during the year preceding (date of publication of final rule) or, if the storage tank was not in operation during that year, you should base the use on the expected use for the first 5-year period after startup. You should include the determination in the Notification of Compliance Status specified in § 63.8070.

(d) An affected source is a new affected source if you commenced construction of the affected source after April 4, 2002, and you meet the applicability criteria at the time you commenced construction.

(e) An affected source is reconstructed if you commenced reconstruction as defined in § 63.2 after April 4, 2002.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.7995 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you startup your new or reconstructed affected source before the effective date of this subpart, then you must comply with the requirements for new and reconstructed sources in this subpart no later than the effective date of the subpart.

(2) If you startup your new or reconstructed affected source after the effective date of this subpart, then you must comply with the requirements for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source on the effective date, you must comply with the requirements for existing sources in this subpart no later than the date 3 years after the effective date of this subpart. If you add equipment to your existing affected source after the effective date and before the date 3 years after the effective date, you must comply with the requirements for existing sources in this subpart no later than the date 3 years after the effective date of this subpart for the added equipment.

(c) If you add equipment to your existing affected source after the date 3 years after the effective date, you must comply with the requirements for existing sources in this subpart upon startup of the added equipment.

(d) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must comply with the requirements in paragraphs (d)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a reconstructed source must be in compliance with the requirements for new and reconstructed sources in this subpart upon startup.

(2) All other parts of the source must be in compliance with the requirements for existing sources in this subpart by the date 1 year after the date the area source becomes a major source.

(e) You must meet the notification requirements in § 63.8070 according to the schedule in § 63.8070 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations and work practice standards in this subpart.

Emission Limitations and Work Practice Standards

§ 63.8000 What emission limitations and work practice standards must I meet?

(a) You must meet each emission limitation and work practice standard in Tables 1 through 6 of this subpart that applies to you as specified in paragraphs (a)(1) through (6) of this section.

(1) Table 1 of this subpart specifies emission limitations and work practice standards for process vessels.

(2) Table 2 of this subpart specifies emission limitations and work practice standards for wastewater streams, waste management units, and liquid streams in open systems within the miscellaneous coating manufacturing operations.

(3) Table 3 of this subpart specifies emission limitations and work practice standards for storage tanks.

(4) Table 4 of this subpart specifies work practice standards for equipment leaks, closed-vent systems, and heat exchange systems.

(5) Table 5 of this subpart specifies emission limitations and work practice standards for transfer operations.

(6) Table 6 of this subpart specifies emission limitations for halogenated vent streams that are controlled with a combustion device.

(b) If an emission stream contains halogen atoms, you must determine whether it meets the definition of a halogenated stream using the procedures specified in § 63.8015.

(c) You must either designate a wastewater stream as an affected wastewater stream or determine that it is an affected wastewater stream using the procedures specified in § 63.8020.

(d) You must meet each operating limit for control devices, recovery devices, and wastewater treatment units in Table 7 of this subpart that applies to you.

(e) All emission limitations, operating limits, and work practice standards in Tables 1 through 7 of this subpart apply to new, reconstructed, and existing sources, unless limited to specific sources within the tables.

(f) As provided in § 63.6(g), you may apply to EPA for approval to use an alternative to an emission limitation or work practice standard in Tables 1 through 7 of this subpart.

(g) Opening of a safety device, as defined in § 63.8105, is allowed at any time conditions require it to avoid unsafe conditions.

(h) The emission limitations in Table 3 of this subpart for control devices used to control emissions from storage tanks do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limitations specified in Table 3 of this subpart, must not exceed 240 hours per year.

General Compliance Requirements

§ 63.8010 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) and the work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(1) During the period, if any, between the compliance date specified for your affected source in § 63.7995 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(2) [Reserved].

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) If you use a boiler or process heater to comply with an emission

limitation, then the vent stream must be introduced into the flame zone of the boiler or process heater.

(e) After you treat an affected wastewater stream or residual removed from an affected wastewater stream, it is no longer subject to this subpart.

(f) You are not required to conduct a performance test or design evaluation when you use any of the units specified in paragraphs (f)(1) through (4) of this section to meet emission limitations specified in § 63.8000. You also are exempt from the continuous compliance, recordkeeping, and reporting requirements specified in §§ 63.8045 through 63.8085 for any of these units. This exemption applies to units used as control devices or wastewater treatment units.

(1) A hazardous waste incinerator that has been issued a final permit under 40 CFR part 270 and that complies with the requirements of 40 CFR part 264, subpart O, or that has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater;

(3) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel; or

(4) A boiler or process heater burning hazardous waste that meets the requirements in paragraph (f)(4)(i) or (ii) of this section:

(i) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

Testing and Initial Compliance Requirements

§ 63.8015 How do I determine whether vent streams are halogenated?

To determine whether an emission stream from a process vessel, waste management unit, or transfer operation is halogenated, you must calculate the concentration of each organic-containing halogen atoms in accordance with § 63.115(d)(2)(v)(A), multiply each concentration by the applicable number of halogen atoms in the organic compound, and sum the resulting halogen atom concentrations associated with each organic compound.

§ 63.8020 How do I determine which wastewater streams are affected wastewater streams?

For each wastewater stream that you generate, you must either designate the wastewater stream as an affected wastewater stream according to the procedures in paragraph (a) of this section, or you must determine whether the wastewater stream is an affected wastewater stream according to the procedures in paragraph (b) of this section. Each affected wastewater stream is subject to the requirements in Table 2 of this subpart.

(a) You may designate any wastewater stream to be an affected wastewater stream. You do not have to determine the concentration for any designated affected wastewater stream.

(b) For wastewater streams that you do not designate as affected wastewater streams, you must use the procedures specified in § 63.144(b) to establish the concentrations, except as specified in paragraphs (b)(1) through (3) of this section.

(1) The phrase ''Group 1 wastewater stream'' in § 63.144 means ''affected wastewater stream'' for the purposes of this subpart.

(2) The phrase ''Group 2 wastewater stream'' means any wastewater stream that is not an affected wastewater stream for the purposes of this subpart.

(3) References to ''Table 8 compounds'' in § 63.144 do not apply for the purposes of this subpart.

§ 63.8025 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) If you have an existing affected source on the effective date of this subpart, you must conduct all initial compliance demonstrations required in Tables 9 through 14 of this subpart that apply to you prior to the date 3 years after the effective date.

(b) If you have a new affected source or a reconstructed source, you must conduct all initial compliance demonstrations required in Tables 9 through 14 of this subpart that apply to you no later than 180 calendar days after the applicable compliance date specified in § 63.7995(a). You must also comply with § 63.7(a)(2) for performance tests.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source, you must conduct all initial compliance demonstrations required in Tables 9 through 14 of this subpart that apply to you in accordance with the schedule specified in paragraphs (c)(1) and (2) of this section.

(1) For those parts of the source that are an existing affected source, you must conduct all initial compliance demonstrations prior to the date 1 year after the area source becomes a major source.

(2) For those parts of the source that are a new affected source or reconstructed source, you must conduct all initial compliance demonstrations no later than 180 calendar days after startup. You must also comply with § 63.7(a)(2) for performance tests.

(d) You must conduct a subsequent performance test or compliance demonstration equivalent to an initial compliance demonstration within 180 days of a change in the worst-case conditions.

§ 63.8030 What performance tests, design evaluations, and other procedures must I use?

(a) You must conduct each performance test, design evaluation, and other procedure in Tables 9 through 14 of this subpart that applies to you.

(b) When you are required to calculate uncontrolled emissions from batch vents according to § 63.1257(d)(2)(i), use any applicable option except you may not calculate emissions from heating using Equation 13 of subpart GGG of this part or emissions from depressurization using the procedures in § 63.1257(d)(2)(i)(C)(*1*) through (*4*).

(c) *Requirements for performance tests.* Each performance test must be conducted according to the requirements in § 63.7(e)(1), except that performance tests for HAP from process vessels must be conducted according to paragraph (c)(3) of this section and not under normal operating conditions as specified in § 63.7(e)(1). Performance tests also must be conducted using the methods and procedures specified in Table 8 of this subpart and in paragraphs (c)(1) through (12) of this section.

(1) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(2) When you conduct a performance test for a control device used to control emissions from process vessels, you must conduct the test according to § 63.1257(b)(8).

(3) When you conduct a performance test for a wastewater treatment unit or control device, you must conduct the test according to § 63.145.

(4) You do not have to conduct a performance test for any condenser, but you must have the results of continuous direct measurement of the condenser outlet gas temperature either for use in determining concentrations as part of the design evaluation specified in paragraph (d) of this section or for

demonstrating initial compliance with the work practice standard for process vessels according to entry 5. in Table 9 of this subpart.

(5) If you elect to use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in § 63.14), to measure the percent reduction of HAP as specified in Table 8 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(5)(i) through (iii) of this section.

(i) In conducting the performance test, collect and analyze samples collected as specified in Method 18 or ASTM D6420–99. You must collect samples simultaneously at the inlet and outlet of the combustion device. If the performance test is for a combustion control device, you must first determine which HAP 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 HAP present in the inlet gas stream for both the inlet and outlet gas streams for the combustion device.

(ii) Calculate the concentration and emission rate of total organic HAP (E_{HAP}) in the inlet and outlet vent streams using the equations in §§ 63.115(c)(3)(ii) and 63.116(c)(4)(ii).

(iii) Calculate the percent reduction in total organic HAP using the equation in § 63.116(c)(4)(iii).

(6) If you elect to use Method 25A of 40 CFR part 60, appendix A, to determine the percent reduction efficiency of a vent stream controlled in a noncombustion device as specified in Table 8 of this subpart, you must conduct the performance test in accordance with paragraphs (c)(6)(i) through (iv) of this section.

(i) Calibrate the instrument on the predominant HAP.

(ii) The 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.

(iii) Calculate the inlet and outlet concentrations of total organic compound (TOC) per Section 8 of Method 25A. Calculate the emission rate of total organic compound (E_{TOC}) in the inlet and outlet vent streams using the equation in § 63.115(c)(4)(ii).

(iv) Calculate the percent reduction in TOC using the equation in § 63.116(c)(4)(iii).

(7) If you elect to use Method 18 of 40 CFR part 60, appendix A, or ASTM D6420–99 (incorporated by reference as specified in § 63.14), to measure the total concentration of HAP at the outlet of the control device as specified in Table 8 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(7)(i) and (ii) of this section.

(i) For a combustion control device, you must first determine which HAP 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 HAP compounds present at the inlet of the control device.

(ii) The total HAP concentration (C_{HAP}) is the sum of the concentrations of the individual HAP components and must be computed for each run using the equation in § 63.115(c)(3)(ii).

(8) If you elect to use Method 25A of 40 CFR part 60, appendix A to measure the TOC concentration of the outlet vent stream as specified in Table 8 of this subpart, you must conduct the performance test using the procedures in paragraphs (c)(8)(i) through (iii) of this section.

(i) Calibrate the instrument on the predominant HAP.

(ii) Conduct the performance test in accordance with paragraphs (c)(8)(ii)(A) and (B) of this section:

(A) The 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; and

(B) The span value of the analyzer must be less than 100 parts per million volume (ppmv).

(iii) Report the results as carbon, calculated according to equation 25A–1 of Method 25A.

(9) If you elect to use Method 25 of 40 CFR part 60, appendix A, to determine the percent reduction of TOC of a vent stream controlled in a combustion device as specified in Table 8 of this subpart, you must conduct the performance test using procedures in paragraphs (c)(9)(i) through (iii) of this section.

(i) Measure the total gaseous non-methane organic (TGNMO) concentration of the inlet and outlet vent streams using the procedures of Method 25, except that you may use Method 25A in lieu of method 25 if either condition in paragraph (c)(9)(i)(A) or (B) of this section is met.

(A) The concentration at the inlet to the control system and the required level of control are such to result in exhaust TGNMO concentrations of 50 ppmv or less.

(B) Because of the high efficiency of the control device, the anticipated TGNMO concentration at the control device exhaust is 50 ppmv or less, regardless of the inlet concentration.

(ii) Using the TGNMO concentration from Method 25 or the TOC concentration from method 25A, calculate the emission rate of TOC (E_{TOC}) in the inlet and outlet vent streams according to paragraph (c)(6)(iii) of this section.

(iii) Calculate the percent reduction in TOC according to paragraph (c)(6)(iv) of this section.

(10) You must use Method 26 in appendix A to 40 CFR part 60 to measure hydrogen halide and halogen concentrations as specified in Table 8 of this subpart, and you must conduct the performance test using the procedures in paragraphs (c)(10)(i) and (ii) of this section.

(i) Use a minimum sampling time of 1 hour.

(ii) Use Method 26A in lieu of Method 26 when measuring emissions at the outlet of a scrubber where the potential for mist carryover exists.

(11) 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, under the conditions specified in paragraphs (c)(11)(i) through (iii) of this section.

(i) If the target compound(s) is listed in Table 1.1 of ASTM D6420–99 and the target concentration is between 150 parts per billion by volume and 100 ppmv.

(ii) If the target compound(s) is not listed in Section 1.1 of ASTM D6420–99, but is potentially detected by mass spectrometry, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, met, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

(iii) If a minimum of one sample/analysis cycle is completed at least every 15 minutes.

(12) Three test runs are required for each performance test.

(d) *Design evaluation.* When you conduct a design evaluation, you must follow the procedures in § 63.1257(a)(1). The design evaluation must also include the value(s) and basis for the operating limit(s) to be monitored as specified in Table 7 of this subpart.

(e) *Establishing operating limits during performance tests.* During the period of each performance test conducted according to paragraph (c)(2) of this section for any type of control device listed in Table 7 of this subpart,

you must collect operating parameter monitoring system data, average the operating parameter data over the test period, determine the operating limit(s) to be monitored for that control device, and set limits according to paragraphs (e)(1) and (2) of this section. You may also elect to establish additional operating limit(s) for conditions other than those under which the performance test was conducted as specified in paragraph (e)(3) of this section.

(1) If the operating limit to be established is a maximum, it must be based on the average of the values for each of the three test runs.

(2) If the operating limit to be established is a minimum, it must be based on the average of the values for each of the three test runs.

(3) If you elect to establish additional operating limits, you must comply with the requirements specified in paragraph (e)(3)(i) of this section and, if applicable, paragraph (e)(3)(ii) of this section.

(i) The additional operating limits may be based on the results of the performance test and supplementary information such as engineering assessments and manufacturer's recommendations. These limits may be established for conditions as unique as emission episodes for individual process vessels that are manifolded to a common control device. You must provide rationale in the Precompliance report for the specific level for each operating limit, including any data and calculations used to develop the limit and a description of why the limit indicates proper operation of the control device. The procedures provided in this paragraph (e)(3)(i) have not been approved by the Administrator and determination of the operating limit using these procedures is subject to review and approval by the Administrator.

(ii) If you elect to establish separate monitoring levels for different emission episodes from process vessels, you must maintain records in your daily schedule or log of operation indicating each point at which you change from one operating limit to another, even if the duration of the monitoring for an operating limit is less than 15 minutes. You must maintain a daily schedule or log of operation according to § 63.8080(a)(5).

(f) *Periodic verification.* For a control device with total inlet HAP emissions less than 1 ton/yr, you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (i.e., daily or block, as defined in § 63.8035(a)(5) or (b)(3)) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 ton/yr as specified in Table 7 of this subpart. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the Precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(g) *Outlet concentration correction for supplemental gases*—(1) *Combustion devices.* If you use a combustion device to comply with an outlet concentration emission limitation, you must correct the actual TOC, organic HAP, and hydrogen halide and halogen concentrations to 3 percent oxygen if you add supplemental gases, as defined in § 63.8105, to the vent stream or manifold. You must use the integrated sampling and analysis procedures of Method 3A 3B of 40 CFR part 60, appendix A, to determine the actual oxygen concentration ($\%O_{2d}$). You must take samples during the same time that you take the TOC or total organic HAP or hydrogen halides and halogen samples. Use Equation 1 of this section to correct the concentration to 3 percent oxygen (C_c):

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 1)}$$

Where:

C_c = concentration of TOC or total organic HAP or hydrogen halide and halogen corrected to 3 percent oxygen, dry basis, ppmv;

C_m = total concentration of TOC or total organic HAP or hydrogen halide and halogen in vented gas stream, average of samples, dry basis, ppmv;

$\%O_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume.

(2) *Noncombustion devices.* If you use a control device other than a combustion device to comply with a TOC, organic HAP, or hydrogen halide outlet concentration emission limitation, you must correct the actual concentration for supplemental gases using Equation 2 of this section; you may use process knowledge and representative operating data to determine the fraction of the total flow due to supplemental gas:

$$C_a = C_m\left(\frac{Q_s + Q_a}{Q_a}\right) \qquad \text{(Eq. 2)}$$

Where:

C_a = corrected outlet TOC, organic HAP, and hydrogen halides and halogens concentration, dry basis, ppmv;

C_m = actual TOC, organic HAP, and hydrogen halides and halogens concentration measured at control device outlet, dry basis, ppmv;

Q_a = total volumetric flow rate of all gas streams vented to the control device, except supplemental gases;

Q_s = total volumetric flow rate of supplemental gases.

(h) *Combination of process vessels with other vents.* If other vents are manifolded with vents from process vessels, you must demonstrate initial compliance for the other vents either as part of the initial compliance demonstration for the process vessels, or you must conduct multiple demonstrations (one for the process vessels, and one or more for the other vents).

§ 63.8035 What are my monitoring installation, operation, and maintenance requirements?

(a) Each continuous emissions monitoring system (CEMS) must be installed, operated, and maintained according to the requirements in paragraphs (a)(1) through (6) of this section. For any CEMS meeting Performance Specification 8, you must also comply with Appendix F, procedure 1 of 40 CFR part 60.

(1) Each CEMS must be installed, operated, and maintained according to the applicable Performance Specification of 40 CFR part 60, appendix B and according to paragraph (a)(2) of this section, except as specified in paragraph (a)(1)(i) of this section.

(i) If you wish to use a CEMS other than a fourier transform infrared spectroscopy (FTIR) meeting the requirements of Performance Specification 15 to measure hydrogen chloride (HCl) before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(ii) [Reserved].

(2) You must determine the calibration gases and reporting units for TOC CEMS in accordance with paragraph (a)(2)(i), (ii), or (iii) of this section.

(i) For CEMS meeting Performance Specification 9 or 15 requirements, determine the target analyte(s) for calibration using either process knowledge of the control device inlet stream or the screening procedures of Method 18 on the control device inlet stream.

(ii) For CEMS meeting Performance Specification 8 used to monitor performance of a combustion device, calibrate the instrument on the predominant HAP and report the results as carbon (C_1), and use Method 25A, or any approved alternative as the reference method for the relative accuracy tests.

(iii) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant HAP using either process knowledge or the screening procedures of Method 18 on the control device inlet stream, calibrate the monitor on the predominant HAP, and report the results as C_1. Use Method 18, ASTM D6420–99, or any approved alternative as the reference method for the relative accuracy tests, and report the results as carbon (C_1).

(3) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B, except as specified in paragraph (a)(3)(i) of this section.

(i) If you have an existing source, the requirement in § 63.8(e)(4) to conduct the performance evaluation not later than 180 days after the compliance date does not apply for the purposes of this subpart. In this situation, you must conduct the performance evaluation for the CEMS prior to the compliance date, and you must submit the results to the Administrator in the Notification of Compliance Status.

(ii) [Reserved].

(4) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) The CEMS data must be reduced to operating day or operating block averages computed using valid data from at least 75 percent of the hours during the averaging period. To have a valid hour of data, you must have four or more data points equally spaced over the 1-hour period (or at least two data points during an hour when calibration, quality assurance, or maintenance activities are being performed). An operating block is a period of time from the beginning to end of a batch process. Operating block averages may be used only for batch processes.

(6) If you add supplemental gases, you must correct the measured concentrations in accordance with § 63.8030(g).

(b) You must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the requirements in paragraphs (b)(1) through (4) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) Have valid data from at least 75 percent of the hours during the averaging period.

(3) Determine the average of all recorded readings associated with each operating limit for each operating day or operating block. An operating block is a period of time that is equal to the time from the beginning to end of an operation in a process vessel.

(4) Record the results of each inspection, calibration, and validation check.

(c) For each temperature monitoring device, you must meet the requirements in paragraphs (b) and (c)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) 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.

(3) 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.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11° C.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must 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.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(d) For each flow measurement device, you must meet the requirements in paragraphs (b) and (d)(1) through (5) of this section.

(1) Locate the flow sensor and other necessary equipment such as straightening vanes in a position that provides a representative flow.

(2) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(3) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(4) Conduct a flow sensor calibration check at least semiannually.

(5) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pressure measurement device, you must meet the requirements in paragraphs (b) and (e)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) 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.

(4) Check pressure tap pluggage daily.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(f) For each pH measurement device, you must meet the requirements in paragraphs (b) and (f)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(g) If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow.

§ 63.8040 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission

limitation and work practice standard that applies to you according to Tables 9 through 14 of this subpart.

(b) You must establish each site-specific operating limit in Table 7 of this subpart that applies to you according to the requirements in § 63.8030(d), (e), or (f).

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8070(e).

Continuous Compliance Requirements

§ 63.8045 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You must not use data recorded during monitoring malfunctions, associated repairs, required quality assurance or control activities, and periods of no flow in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement. You must use all of the data you collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.8050 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation and work practice standard in Tables 1 through 7 of this subpart that applies to you according to methods specified in Tables 15, 16, and 17 of this subpart.

(b) You must report each instance in which you did not meet the requirements in Tables 15 and 16 of this subpart that apply to you. This includes periods of startup, shutdown and malfunction. You must also report each instance in which you did not meet the requirements in Table 17 of this subpart that apply to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.8075(d).

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Alternative Means of Compliance

§ 63.8055 How do I comply with the alternative standard?

As an alternative to complying with the emission limitations and work practice standards for process vessels and storage tanks in Tables 1 and 2 of this subpart, you may comply with the emission limitations in paragraph (a) of this section and demonstrate initial and continuous compliance in accordance with the requirements in paragraphs (b) and (c) of this section. Reporting and recordkeeping requirements are specified in §§ 63.8075 and 63.8080.

(a) *Emission limitations and work practice standards.* (1) You must route vent streams through a closed-vent system to a control device that reduces HAP emissions as specified in either paragraph (a)(1)(i) or (ii) of this section.

(i) If you use a combustion control device, it must reduce HAP emissions as specified in paragraphs (a)(1)(i)(A), (B), and (C) of this section.

(A) To an outlet TOC concentration of 20 ppmv or less.

(B) To an outlet concentration of hydrogen halides and halogens of 20 ppmv or less.

(C) As an alternative to paragraph (a)(1)(i)(B) of this section, if you control halogenated vent streams emitted from a combustion device followed by a scrubber, you may reduce the hydrogen halides and halogens generated in the combustion device by ≥95 percent by weight in the scrubber and establish operating parameters for the scrubber in accordance with Table 7 of this subpart.

(ii) If you use a noncombustion control device, it must reduce HAP emissions to an outlet total organic concentration of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less.

(2) You must comply with the work practice standards for closed-vent systems in Table 4 of this subpart.

(b) *Initial compliance requirements.* You demonstrate initial compliance with the alternative standard if you comply with the requirements in paragraphs (b)(1) through (6) of this section.

(1) Install and begin to operate and maintain each CEMS in accordance with paragraph (c) of this section no later than the date 3 years after the effective date of this subpart.

(2) Conduct a performance evaluation of the CEMS as specified in § 63.8035(a)(3).

(3) Submit the results of any determination of the target analytes or predominant HAP in the Notification of Compliance Status.

(4) If you add supplemental gases to the vent stream or manifold, determine either the oxygen concentration (if you use a combustion device) or both the total vent stream and supplemental gas stream flow rates (if you use a noncombustion device), and calculate the ratio in Equation 1 or 2 of § 63.8030 to use in correcting the measured concentrations for supplemental gases.

(5) If you elect to comply with the requirement to reduce hydrogen halides and halogens by ≥95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must demonstrate initial compliance by conducting a performance test and setting a site-specific operating limit(s) for the scrubber in accordance with Table 14 of this subpart. The applicable operating limits are specified in Table 7 of this subpart. You must submit the results of the initial compliance demonstration in the Notification of Compliance Status.

(6) Comply with the requirements for closed-vent systems in entries (c) and (d) of Table 12 of this subpart.

(c) *Continuous compliance requirements.* You demonstrate continuous compliance with the emission limitations in paragraph (a) of this section according to the requirements in paragraphs (c)(1) through (7) of this section.

(1) Except as specified in paragraphs (c)(1)(iii) and (iv) of this section, you must install, operate, and maintain CEMS to measure TOC and total hydrogen halide and halogen concentrations in accordance with paragraphs (c)(1)(i) and (ii) of this section and in accordance with § 63.8035(a)(1), (2), and (4), and you must reduce the CEMS data as specified in § 63.8035(a)(5). If you add supplemental gases to the vent stream or manifold, you must correct measured concentrations for supplemental gases or monitor other operating parameters as specified in paragraph (c)(7) of this section. The reduced results must be below the concentration limits specified in paragraph (a) of this section.

(i) Install CEMS to measure TOC in accordance with paragraph (c)(1)(i)(A) or (B) of this section.

(A) For noncombustion devices, install a CEMS that meets Performance Specification 8, 9, or 15.

(B) For combustion devices, install a CEMS that meets Performance Specification 8 and report the results as C1.

(ii) Install CEMS to measure total hydrogen halide and halogen concentrations in accordance with paragraph (c)(1)(ii)(A) or (B) of this section:

(A) Install a CEMS that meets Performance Specification 15 to measure HCl; or

(B) If you wish to measure HCl using a CEMS for which we have not promulgated performance specifications, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(iii) You do not need to monitor the hydrogen halide and halogen concentrations if, based on process knowledge, you determine that the emission stream does not contain hydrogen halides or halogens.

(iv) If you elect to comply with the requirement to reduce hydrogen halides and halogens by ≥95 percent by weight in paragraph (a)(1)(i)(C) of this section, you must comply with the requirements in paragraphs (c)(1)(iv)(A) through (C) of this section.

(A) Install, operate, and maintain CPMS for the scrubber as specified in § 63.8035(b) through (f), as applicable.

(B) Collect and reduce CPMS data for the scrubber in accordance with the requirements specified in entry 5., 6., or 7. of Table 16 of this subpart, as applicable.

(C) Maintain the daily or block average CPMS levels within the ranges established during the initial performance test.

(2) You must install, calibrate, and operate a flow indicator as specified in § 63.8035(g).

(3) You must monitor and collect data according to § 63.8045(b) and (c).

(4) You must demonstrate continuous compliance with the work practice standards for closed-vent systems as specified in entries (h) and (i) in Table 17 of this subpart.

(5) You must report each deviation according to § 63.8050(b).

(6) You must comply with the startup, shutdown, and malfunction requirements in § 63.8050(c) and (d).

(7) *Correction for supplemental gases.* If you add supplemental gases to the vents or manifolds, you must either correct for supplemental gases as specified in § 63.8030(g) or comply with the requirements of paragraph (c)(7)(i) or (ii) of this section. If you correct for supplemental gases as specified in § 63.8030(g)(2) for noncombustion control devices, you must evaluate the flow rates as specified in paragraph (c)(7)(iii) of this section.

(i) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.8030(g), you must monitor residence time and firebox temperature according to the requirements of paragraphs (c)(7)(i)(A) and (B) of this section. Monitoring of residence time may be accomplished by monitoring flowrate into the combustion chamber.

(A) If complying with the alternative standard instead of complying with an emission limitation of 95 percent or less, you must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C.

(B) If complying with the alternative standard instead of complying with an emission limitation of 98 percent or less, you must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

(ii) *Provisions for dense gas systems.* As an alternative to correcting for supplemental gases as specified in § 63.8030(g), for noncombustion devices used to control emissions from dense gas systems, as defined in § 63.8105, you must monitor flowrate as specified in paragraphs (c)(7)(ii)(A) through (D) of this section.

(A) Use Equation 1 of this section to calculate the system flowrate setpoint at which the average concentration is 5,000 ppmv TOC:

$$Q_{set} = \frac{721 \times E_{an}}{5{,}000} \qquad \text{(Eq. 1)}$$

Where:

Q_{set} = system flowrate setpoint, scfm;
E_{an} = annual emissions entering the control device, lbmoles/yr.

(B) Annual emissions used in Equation 1 of this section must be based on the actual mass of organic compounds entering the control device, as calculated from the most representative emissions inventory data that you submitted within the 5 years before the Notification of Compliance Status is due. You must recalculate the system flowrate setpoint once every 5 years using the annual emissions from the most representative emissions inventory data submitted during the 5-year period after the previous calculation. Results of the initial calculation must be included in the Notification of Compliance Status, and recalculated values must be included in the next compliance report after each recalculation. For all calculations after the initial calculation, to use emissions inventory data calculated using procedures other than those specified in § 63.1257(d), you must submit the emissions inventory data calculations and rationale for their use in the Precompliance report, Notification of Process Change report, or an application for a Part 70 permit renewal or revision.

(C) In the Notification of Compliance Status, you may elect to establish both a maximum daily average operating flowrate limit above the flowrate setpoint and a reduced outlet concentration limit corresponding to this flowrate limit. You may also establish reduced outlet concentration limits for any daily average flowrates between the flowrate setpoint and the flowrate limit. The correlation between these elevated flowrates and the corresponding outlet concentration limits must be established using Equation 2 of this section:

$$C_a = \frac{Q_{set}}{Q_{lim}} \times 50 \qquad \text{(Eq. 2)}$$

Where:

C_a = adjusted outlet concentration limit, dry basis, ppmv;
50 = outlet concentration limit associated with the flowrate setpoint, dry basis, ppmv;
Q_{set} = system flowrate setpoint, scfm;
Q_{lim} = actual system flowrate limit, scfm.

(D) You must install and operate a monitoring system for measuring system flowrate. The flowrate into the control device must be monitored and recorded at least once every hour. The system flowrate must be calculated as the average of all values measured during each 24-hour operating day. The flowrate monitoring sensor must have a minimum tolerance of 2 percent of the system flowrate setpoint, and the flowrate monitoring device must be calibrated at least semi-annually.

(iii) *Flow rate evaluation for noncombustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.8030(g)(2) for noncombustion devices, you must evaluate the volumetric flow rate of supplemental gases, Q_s, and the volumetric flow rate of all gases, Q_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 2 of

§ 63.8030, must be included in the Notification of Compliance Status and in the next compliance report submitted after an operating scenario change.

§ 63.8060 How do I conduct emissions averaging for process vessels?

Emissions averaging is allowed for process mixing vessels only. For an existing source, you may elect to comply with the emission limitations for process mixing vessels in Tables 1 through 4 of this subpart by complying with the emission averaging provisions for storage tanks in §§ 63.1250 through 63.1260.

§ 63.8065 How may I transfer wastewater to a treatment unit that I do not own or operate?

(a) You may elect to transfer an affected wastewater stream or a residual removed from an affected wastewater stream to an on-site treatment operation that you do not own or operate, or to an off-site treatment operation, according to the requirements in § 63.132(g), except as specified in paragraphs (a)(1) through (4) of this section.

(1) If you send wastewater offsite for biological treatment, the waste management units up to the activated sludge unit must be covered, or you must demonstrate that less than 5 percent of the total HAP on list 1 in § 63.145(h) is emitted from these units.

(2) References in § 63.132(g) to ''Group 1'' wastewater mean ''affected'' wastewater for the purposes of this subpart.

(3) The references in § 63.132(g)(2) to ''§§ 63.133 through 63.147'' and in § 63.132(g)(1)(ii) to ''provisions of this subpart'' (*i.e.,* subpart G) refer to §§ 63.8000 through 63.8050, 63.8075, and 63.8080 for the purposes of this subpart.

(4) The reference in § 63.132(g)(2) to ''§ 63.102(b) of subpart F'' does not apply for the purposes of this subpart.

(b) You must keep a record of the notice sent to the treatment operator stating that the wastewater stream or residual contains organic HAP which are required to be managed and treated in accordance with the provisions of this subpart.

Notification, Reports, and Records

§ 63.8070 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before the effective date of the subpart, you must submit an Initial Notification not later than 120 calendar days after the effective date of the subpart.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 9 through 14 of this subpart, you must submit a Notification of Compliance Status according to the schedule in paragraphs (e)(1) and (2) of this section, and the Notification of Compliance Status must include the information specified in paragraph (e)(3) of this section.

(1) For an existing source in operation on the effective date, you must submit the Notification of Compliance Status no later than the compliance date specified in § 63.7995(b). For parts of an area source that become a major source and an existing affected source, you must submit the Notification of Compliance Status no later than the compliance date specified in § 63.2445(d)(2).

(2) If you have a new source, reconstructed source, or parts of a former area source that are a new source, you must submit the Notification of Compliance Status no later than 240 days after the applicable compliance date specified in § 63.7995(a) or (d)(1).

(3) The Notification of Compliance Status must include the information in paragraphs (e)(3)(i) through (viii) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP emissions from the affected source.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 9 through 14 of this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Listing of all operating scenarios.

(v) Descriptions of worst-case operating and/or testing conditions for control devices.

(vi) Identification of emission points subject to overlapping requirements described in § 63.8057 and the authority under which you will comply.

(vii) The information specified in § 63.1039(a)(1) through (3) for each process subject to the work practice standards for equipment leaks in Table 4 of this subpart.

(viii) If you are complying with the vapor balancing work practice standard for storage tanks, include a statement to that effect and a statement that the pressure vent setting on the storage tank is equal to or greater than 2.5 pounds per square inch gauge, as specified in Table 11 of this subpart.

(f)(1) Except as specified in paragraph (f)(2) of this section, whenever you make a process change, or change any of the information submitted in the Notification of Compliance Status, you must submit a report quarterly. For the purposes of this section, a process change means the startup of a new process, as defined in § 63.8105. You may submit the notification as part of the compliance report required under § 63.8070(d). The notification must include all of the information in paragraphs (f)(1)(i) through (iv) of this section.

(i) A brief description of the process change.

(ii) A description of any modifications to standard procedures or quality assurance procedures.

(iii) Revisions to any of the information reported in the original Notification of Compliance Status under paragraph (e) of this section.

(iv) Information required by the Notification of Compliance Status under paragraph (e) of this section for changes involving the addition of processes or equipment.

(2) You must submit a report 60 days before the scheduled implementation date of either of the changes identified in paragraphs (f)(2)(i) or (ii) of this section.

(i) Any change in the activity covered by the Precompliance report.

(ii) A change in the status of a control device from small to large.

§ 63.8075 What reports must I submit and when?

(a) You must submit each report in Table 18 of this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 18 of this subpart and according to the following.

(1) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7995 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.7995.

(2) The first Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.7995.

(3) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent Compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) *Precompliance report.* You must submit a Precompliance report to request approval of any of the information in paragraphs (c)(1) through (4) of this section. We will either approve or disapprove the report within 90 days after we receive it. If we disapprove the report, you must still be in compliance with the emission limitations and work practice standards in this subpart by the compliance date. To change any of the information submitted in the report, you must notify us 60 days before the planned change is to be implemented.

(1) Requests for approval to set operating limits for parameters other than those in Table 7 of this subpart, and for control devices and treatment units other than those in Table 7 of this subpart. Alternatively, you may make these requests according to § 63.8(f).

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to entry 8. on Table 7 of this subpart are operating as designed.

(3) A description of the test conditions, data, calculations, and other information used to establish additional operating limits according to § 63.8030(h)(3).

(4) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions from process vessels as required in Table 10 of this subpart.

(d) *Compliance report.* The Compliance report must contain the information specified in paragraphs (d)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the Compliance report must include the information in § 63.10(d)(5)(i).

(5) The Compliance report must contain the information on deviations according to paragraphs (d)(5)(i), (ii), and (iii) of this section.

(i) If there are no deviations from any emission limitations (emission limits and operating limits) that apply to you, and there are no deviations from the requirements for work practice standards in Table 17 of this subpart, include a statement that there were no deviations from the emission limitations or work practice standards during the reporting period.

(ii) For each deviation from an emission limitation (emission limits and operating limits) and for each deviation from the requirements for work practice standards in Table 17 of this subpart that occurs at an affected source where you are not using a continuous monitoring system (CMS) to comply with the emission limitations or work practice standards in this subpart, you must include the information in paragraphs (e)(5)(ii)(A) through (C) of this section. This includes periods of startup, shutdown, and malfunction.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) Operating logs and operating scenarios.

(iii) For each deviation from an emission limitation (emission limits and operating limits) occurring at an affected source where you are using a CMS to comply with the emission limit in this subpart, you must include the information in paragraphs (d)(5)(iii)(A) through (N) of this section. This includes periods of startup, shutdown, and malfunction.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(H) An identification of each hazardous air pollutant that was monitored at the affected source.

(I) A brief description of the process units.

(J) A brief description of the CMS.

(K) The date of the latest CMS certification or audit.

(L) A description of any changes in CMS, processes, or controls since the last reporting period.

(M) Operating logs and operating scenarios.

(N) The operating day or operating block average values of monitored parameters.

(6) If there were no periods during which the CMS (including CEMS and CPMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(7) If you invoke the delay of repair provisions in § 63.104(e) for heat exchange systems, you must include the

information in § 63.104(f)(2)(i) through (iv) in your next compliance report. If the leak remains unrepaired, you must also submit the information in each subsequent compliance report until repair of the leak is reported.

(8) Include the information in paragraphs (d)(8)(i) through (iii), as applicable, for storage tanks subject to the emission limitations and work practice standards in Table 3 of this subpart.

(i) For each storage tank subject to control requirements, include periods of planned routine maintenance during which the control device does not comply with the emission limitation in Table 3 of this subpart.

(ii) For each storage tank controlled with a floating roof, include a copy of the inspection record (required in § 63.1065) when inspection failures occur.

(iii) If you elect to use an extension for a floating roof inspection in accordance with § 63.1063(c)(2)(iv)(B) or (e)(2), include the documentation required by § 63.1063 (c)(2)(iv)(B) or (e)(2).

(9) Include each new operating scenario which has been operated since the time period covered by the last compliance report. For each new operating scenario, you must provide verification that the operating conditions for any associated control or treatment device have not been exceeded and that any required calculations and engineering analyses have been performed. For the initial compliance report, each operating scenario operated since the compliance date must be submitted.

(10) Include the information specified in § 63.1039(b)(1) through (8) for equipment subject to the work practice standards for equipment leaks in Table 4 of this subpart.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 18 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), or work practice standard in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

§ 63.8080 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (10) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(4) Records specified in § 63.1038(b) and (c) for equipment subject to the work practice standards for equipment leaks in Table 4 of this subpart.

(5) Daily schedule or log of each operating scenario.

(6) The information specified in paragraphs (a)(6)(i) and (ii) for process vessels in compliance with the percent reduction emission limitation in Table 1 of this subpart.

(i) Records of whether each batch operated was considered a standard batch.

(ii) The actual uncontrolled and controlled emissions for each batch that is considered to be a non-standard batch.

(7) Records of planned routine maintenance for control devices used to comply with the percent reduction emission limitations for storage tanks in Table 3 of this subpart.

(8) The maintenance wastewater plan required in Table 9 of this subpart.

(9) A record of each time a safety device is opened to avoid unsafe conditions in accordance with § 63.8000(c).

(10) Records of the results of each CPMS calibration, validation check, and inspection required by § 63.8035(c)(6) through (8), (d)(4) and (5), (e)(4) through (7), and (f)(3) and (4).

(b) For each CEMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi)–(xi).

(2) Previous (i.e., superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in Tables 15, 16, and 17 of this subpart to show continuous compliance with each emission limitation and work practice standard that applies to you.

§ 63.8085 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (1) After the compliance dates specified in § 63.7995, if a control device that you use to comply with this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC; or the monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC; and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if your facility had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart; or with the monitoring and recordkeeping requirements in 40 CFR part 264 or 265 and the reporting requirements in 40 CFR part 264, as described in this paragraph, which constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If you elect to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, you must report the information required for the compliance report in § 63.8075, and you must

identify in the Notification of Compliance Status required by § 63.8070 the monitoring, recordkeeping, and reporting authority under which you will comply.

(2) After the compliance dates specified in this section, if any equipment at an affected source that is subject to this subpart is also subject to 40 CFR part 264, subpart BB or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR part 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of § 63.1255, to the extent that the requirements of 40 CFR part 264 and/or 265 duplicate the requirements of this subpart. You must identify in the Notification of Compliance Status required by § 63.8070 if you will comply with the recordkeeping and reporting authority under 40 CFR part 264 and/or 265.

(b) *Compliance with 40 CFR part 60, subpart Kb.* After the compliance dates specified in § 63.7995, you are in compliance with this subpart HHHHH for any storage tank that is assigned to miscellaneous coating manufacturing operations and that is both controlled with a floating roof and in compliance with the provisions of 40 CFR part 60, subpart Kb. You are in compliance with this subpart HHHHH if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with 40 CFR part 60, subpart Kb, you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart HHHHH. You must also identify in your Notification of Compliance Status required by § 63.8070 which storage tanks are in compliance with 40 CFR 60 part 60, subpart Kb.

(c) *Compliance with other regulations for wastewater.* After the compliance dates specified in § 63.7995, if you have an affected wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272, you may elect to determine whether this subpart or 40 CFR parts 260 through 272 contain the more stringent control requirements (e.g., design, operation, and inspection requirements for waste management units; numerical treatment standards; etc.) and the more stringent testing, monitoring, recordkeeping, and reporting requirements. Compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of this subpart constitutes compliance with this subpart. For example, provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.138(h) constitute compliance with this subpart. In the Notification of Compliance Status required by § 63.8070, you must identify the more stringent provisions of 40 CFR parts 260 through 272 with which you will comply. You must also identify in the Notification of Compliance Status required by § 63.8070 the information and procedures that you used to make any stringency determinations. If you do not elect to determine the more stringent requirements, you must comply with both the provisions of 40 CFR parts 260 through 272 and the provisions of this subpart.

§ 63.8095 What parts of the General Provisions apply to me?

Table 19 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8100 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the US EPA, or a delegated authority such as your State, local, or tribal agency. If the US EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your US EPA Regional Office to find out if this subpart is delegated to your 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 paragraph (c) of this section are retained by the Administrator of US EPA and are not delegated to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the non-opacity emission limitations and work practice standards in § 63.8000(a) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8105 What definitions apply to this subpart?

(a) The following terms used in this subpart and referenced subparts are defined in §§ 63.101, 63.111, 63.1020, 63.1601, and 63.1251 as specified after each term:

Actual HAP emissions (§ 63.1251)
Air pollution control device (or control device) (§ 63.1251)
Annual average concentration (§ 63.111)
Block (§ 63.1251)
Boiler (§ 63.111)
Car seal (§ 63.111)
Cleaning operation (§ 63.1251)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Connector (§ 63.1020)
Container (§ 63.111)
Cover (§ 63.111)
Dense gas system (§ 63.1251)
Double block and bleed system (§ 63.1020)
Duct work (§ 63.111)
Enhanced biological treatment system (§ 63.111)
External floating roof (EFR) (§ 63.1601)
Fixed roof (§ 63.1251)
Flexible fabric sleeve seal (§ 63.1061)
Floating roof (§ 63.1061)
Flow indicator (§ 63.111)
Halogenated vent stream (§ 63.111)
Hard-piping (§ 63.111)
Hydrogen halides and halogens (§ 63.1251)
In gas and vapor service (§ 63.1020)
In heavy liquid service (§ 63.1020)
In light liquid service (§ 63.1020)
In liquid service (§ 63.1020)
In organic hazardous air pollutant (HAP) service (§ 63.1020)
In vacuum service (§ 63.1020)
Individual drain system (§ 63.111)
Initial fill or initial filling (§ 63.1061)
Instrumentation system (§ 63.1020)
Internal floating roof (§ 63.1061)
Junction box (§ 63.111)
Liquid-mounted seal (§ 63.1061)
Liquids dripping (§ 63.1020)
Mechanical shoe seal or metallic shoe (§ 63.1061)
Nonrepairable (§ 63.1020)
Oil-water separator (§ 63.111)
Open-ended valve or line (§ 63.1020)
Point of determination (§ 63.111)
Pressure relief device or valve (§ 63.1020)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Repaired (§ 63.1020)
Residual (§ 63.111)
Safety device (§ 63.1251)
Screwed (threaded) connector (§ 63.1020)
Sewer line (§ 63.111)
Surface impoundment (§ 63.111)
System flowrate (§ 63.1251)
Table 9 compound (§ 63.111)
Total organic compounds (TOC) (§ 63.1251)
Treatment process (§ 63.111)
Uncontrolled HAP emissions (§ 63.1251)
Vapor-mounted seal (§ 63.1061)
Wastewater tank (§ 63.111)
Water seal controls (§ 63.111)

(b) All terms used in this subpart and referenced subparts that are not listed in

paragraph (a) of this section are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Bulk loading means the loading, into a tank truck or rail car, of liquid coating products that contain one or more of the organic HAP, as defined in section 112 of the CAA, from a loading rack. A loading rack is the system used to fill tank trucks and railcars at a single geographic site.

Closed biological treatment process means a tank or surface impoundment where biological treatment occurs and air emissions from the treatment process are routed to a control device by means of a closed-vent system or by means of hard-piping. The tank or surface impoundment has a fixed roof, as defined in § 63.1251, or a floating flexible membrane cover that meets the requirements specified in § 63.134.

Construction means the onsite fabrication, erection, or installation of an affected source. Addition of new equipment to an affected source does not constitute construction, but it may constitute reconstruction of the affected source if it satisfies the definition of reconstruction in § 63.2.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit) or work practice standard;

(2) fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tons/yr, before control.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the miscellaneous coating manufacturing operations into an individual drain system in preparation for or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of pumps into an individual drain system, and draining of portions of the process equipment for repair. Wastewater from cleaning operations is not considered maintenance wastewater.

Mixing means an operation in which a material is combined with one or more materials at ambient temperature without a chemical reaction.

Open biological treatment process means a biological treatment process that is not a closed biological treatment process as defined in this section.

Operating scenario means for the purposes of reporting and recordkeeping, any specific operation of process vessels and associated equipment used to produce a specific family of coatings and includes for the production of each family of coatings:

(1) A description of the process and the type of process equipment used;

(2) An identification of related process vessel vents and their associated emissions episodes and durations, wastewater point of determination (POD), and storage tanks;

(3) The applicable control requirements of this subpart, including the level of required control, and for vents, the level of control for each vent;

(4) The control or treatment devices used, as applicable, including a description of operating and/or testing conditions for any associated control device;

(5) The vents from process vessels, wastewater POD, and storage tanks (including those from other processes) that are simultaneously routed to the control or treatment device(s);

(6) The applicable monitoring requirements of this subpart and any parametric level that assures compliance for all emissions routed to the control or treatment device;

(7) Calculations and engineering analyses required to demonstrate compliance; and

(8) For reporting purposes, a change to any of these elements not previously reported, except for paragraph (5) of this definition, constitutes a new operating scenario.

Predominant HAP means, as used in calibrating an analyzer, the single organic HAP that constitutes the largest percentage of the total HAP in the analyzed gas stream, by volume.

Process means all of the equipment which collectively function to produce a family of coatings. A process may consist of one or more mixing vessels. Nondedicated solvent recovery operations located within a contiguous area within the affected source are considered single processes.

Process vessel vent means a vent from a mixing vessel or vents from multiple mixing vessels that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii), test data using Methods 18 of 40 CFR part 60, appendix A, or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vessel vents. Process vessel vents do not include vents on storage tanks, wastewater emission sources, or pieces of equipment subject to the emission limitations and work practice standards in entry 1. of Table 4 of this subpart.

Recovery device means an individual unit of equipment used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device for a wastewater stream, a decanter and any other equipment based on the operating principle of gravity separation must receive only two-phase liquid streams.

Responsible official means responsible official as defined in 40 CFR 70.2.

Shutdown means the cessation of operation of an affected source, any process vessels within an affected source, or equipment required or used to comply with this subpart as a result of a malfunction or for replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown also applies to the emptying and degassing of storage tanks. Shutdown does not apply to the cessation of production of a particular coating at the end of a campaign, for routine maintenance, for rinsing or washing of equipment between batches, or other routine operations.

Small control device means a control device that controls total HAP emissions of less than 10 tons/yr, before control.

Standard batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a standard batch are based on the operating conditions that result in highest emissions. The standard batch defines the uncontrolled and controlled emissions for each emission episode defined under the operating scenario.

Startup means the setting in operation of a new or reconstructed affected source. For new equipment added to an affected source, including equipment used to comply with this subpart, startup means the first time the equipment is put into operation. Startup also means the first time a new family of coatings is produced in existing equipment. Startup does not apply to the first time equipment is put into operation at the start of a campaign to produce a family of coatings that has been produced in the past, after a shutdown for maintenance, or at the beginning of each batch within a campaign.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks. Storage tank also means a tank or other vessel in a tank farm that receives and accumulates used solvent from multiple batches of a process or processes for purposes of solvent recovery. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process vessels.

Supplemental gases are any gaseous streams that are not defined as process vents, or closed-vent systems from wastewater management and treatment units, storage tanks, or equipment components and that contain less than 50 ppmv TOC, as determined through process knowledge, that are introduced into vent streams or manifolds. Air required to operate combustion device burner(s) is not considered supplemental gas.

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.

Waste management unit means the equipment, structure(s), and/or device(s) used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include wastewater tanks, air flotation units, surface impoundments, containers, oil-water or organic-water separators, individual drain systems, biological wastewater treatment units, waste incinerators, and organic removal devices such as steam and air stripper units, and thin film evaporation units. If such equipment is used for recovery then it is part of the miscellaneous coating manufacturing operations and is not a waste management unit.

Wastewater stream means organic HAP-containing water, raw material, intermediate, product, by-product, or waste material that is discarded from miscellaneous coating manufacturing operations through a single POD, and that contains an annual average concentration of Table 9 compounds (as defined in § 63.111) of at least 2,000 ppmw at any flow rate. For the purposes of this subpart, noncontact cooling water is not considered a wastewater stream.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart HHHHH of Part 63

As required in § 63.8000(a)(1) and (e), you must meet each emission limitation and work practice standard in the following table that applies to your process vessels:

TABLE 1 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

For each * * *	At * * *	You must * * *	Or you must * * *
1. Portable process vessel >250 gal.	An existing source	Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP.	Non applicable.

TABLE 1 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each * * *	At * * *	You must * * *	Or you must * * *
2. Stationary process vessel >250 gal.	An existing source	Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains a HAP; and route emissions from the vented cover or lid through a closed-vent system to any of the following: a control device that reduces HAP emissions by ≥75 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤20 ppmv, both corrected for supplemental gases as specified in § 63.8030(g), or a flare that meets the performance requirements in § 63.11(b), but you may not use a flare to control halogenated vent streams; or a control device specified in § 63.8010(f); and Comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart; and comply with the emission limitations in Table 8 of this subpart if you use a combustion device to control halogenated vent streams. Determine whether a vent stream is halogenated according to § 63.8015.	Equip the vessel with a tightly-fitting vented cover or lid that must be closed at all times when the vessel contains a HAP; and route emissions from the vented cover or lid through a closed-vent system to a condenser that reduces the outlet gas temperature to: <10°C if the process vessels contains HAP with a partial pressure <0.7 kPa; or <2°C if the process vessel contains HAP with a partial pressure ≥0.7 kPa and <17.2 kpa; or <−5°C if the process vessel contains HAP with a partial pressure ≥17.2 kpa; and determine partial pressures at 25°C; and comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart.

TABLE 1 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each * * *	At * * *	You must * * *	Or you must * * *
3. Portable and stationary process vessel >250 gal.	A new or reconstructed source	Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains a HAP; and route emissions from the vented cover or lid through a closed-vent system to any of the following: a control device that reduces HAP emissions by ≥95 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤20 ppmv, both corrected for supplemental gases as specified in §63.8030(j); or a flare that meets the performance requirements in §63.11(b), but you may not use a flare to control halogenated vent streams; or a control device specified in §63.8010(f); and Comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart; and comply with the emission limitations in Table 6 of this subpart, if you use a combustion device to control halogenated vent streams. Determine whether a vent stream is halogenated according to §63.8015.	Equip the vessel with a tightly-fitting vented cover or lid that must be closed at all times when the vessel contains a HAP; and route emissions from the vented cover or lid through a closed-vent system to a condenser that reduces the outlet gas temperature to: <-4°C if the process vessels contains HAP with a partial pressure <0.7 kPa; or <-20°C if the process vessel contains HAP with a partial pressure ≥0.7 kpa and <17.2 kpa; or <-30°C if the process vessel contains HAP with a partial pressure ≥17.2 kpa; and determine partial pressures at 25°C; and comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart.

As required in §63.8000(a)(2) and (e) and 63.8020, you must meet each emission limitation and work practice standard in the following table that applies to your wastewater streams, waste management units, and liquid streams in open systems within miscellaneous coating manufacturing operations:

TABLE 2 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN THE MISCELLANEOUS COATING MANUFACTURING OPERATIONS

For each * * *	You must * * *	According to the following * * *
1. Waste management unit (i.e., wastewater tank, surface impoundment, container, individual drain system, and oil-water separator) used to convey, store, treat, or dispose of an affected wastewater stream.	a. Suppress emissions of HAP listed on Table 9 of subpart G by complying with the requirements specified in §63.132(a)(2)(i) and 63.133 through 63.137, and b. Route vent streams from the waste management units through a closed-vent system to any of the following: a flare that meets the performance requirements of §63.11(b), except that you may not qent a halogenated vent stream to a flare; or a control device that reduces HAP emission by ≥95 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv; or a combustion device with a minimum residence time of 0.5 seconds at a minimum temperature of 760° C; or a control device specified in §63.8010(f); and comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart.	For any halogenated vent streams that are controlled with a combustion device, also comply with the emissions limitations in Table 6 of this subpart. Determine whether a vent stream is halogenated according to §63.8015; and you must correct outlet concentrations to account for supplemental gases using the procedures specified in §63.8030(g); and you may not comply with the outlet concentration standard for surface impoundments and containers.

TABLE 2 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN THE MISCELLANEOUS COATING MANUFACTURING OPERATIONS—Continued

For each * * *	You must * * *	According to the following * * *
2. Affected wastewater stream	a. Treat the wastewater to remove or destroy organic HAP compounds using one of the treatment options specified in § 63.138(b)(1), (d), (e), (f), (g), or (h) of subpart G[a].	i. The treatment options may be used in combination for different wastewater streams and/or for different compounds in the same wastewater streams, except where otherwise provided in § 63.138. ii. You may use a series of treatment processes in accordance with the provisions in § 63.138(a)(7). iii. You need not cover and vent an open biological treatment process to a control device.
3. Residual removed from an affected wastewater stream.	Control HAP emissions by complying with the provisions in entry 1. in this table and in § 63.138(k).	Non applicable.
4. Maintenance wastewater stream containing HAP listed on Table 9 of subpart G of this part.	Develop and implement a maintenance wastewater plan according to § 63.105.	Non applicable.
5. Liquid stream in an open system within the miscellaneous coating manufacturing operations.	Comply with the requirements in Table 35 of subpart G for each item of equipment that is:[b] a drain, drain hub, manhole, lift station, trench, pipe, or oil-water separator that conveys water with a total annual average concentration of compounds listed on Table 9 of subpart G ≥4,000 ppmw at any flow rate at an existing source, or ≥2,000 ppmw at any flow rate at a new or reconstructed source; or a tank that receives one or more streams that contain water with a total annual average concentration of compounds listed on Table 9 of subpart G of this part ≥4,000 ppmw at any flow rate at an existing source or ≥2,000 ppmw at any flow rate at a new source.	You must determine the concentration of the stream being received by a tank at the inlet to the tank, and you must use the procedures in § 63.144(b).

[a] The references to ''Group 1'' streams in § 63.138 mean wastewater streams with a ''Table 9'' HAP concentration ≥4,000 ppmw at existing sources and ≥2,000 ppmw at new sources for the purposes of this subpart. References to ''Table 8'' compounds do not apply for the purposes of this rule.

[b] References in § 63.149 to fuel gas systems do not apply for the purposes of this subpart. When § 63.149 refers to § 63.139(c), references to entry 1.b. in this table apply for the purposes of this subpart.

As required in § 63.8000(a)(3), (e), and (h), you must meet each emission limitation and work practice standard in the following table that applies to your storage tanks:

TABLE 3 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR STORAGE TANKS

For each * * *	At * * *	You must * * *	Or you must * * *
1. Storage tank ≥20,000 gal storing material that has a maximum true vapor pressure of total HAP ≥1.9 psia.	An existing source	Route emissions through a closed-vent system to either: a control device that reduces organic HAP emissions by ≥90 percent by weight; or a control device that reduces emisisons to an outlet total organic HAP or TOC concentration less than or equal to 20 ppmv and an outlet hydrogen halide and halogen concentraction less than or equal to 20 ppmv; or a flare that meets the performance requirements specified in § 63.11(b); or a control device specified in § 63.8010(f); and Comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart.	Operate and maintain either an internal floating roof or an external floating roof designed, operated, inspected, and repaired as specified in § 63.1063(a) through (e); or vapor balance according to § 63.1253(f), except that: the references to §§ 63.1255(g)(4)(i) through (iv), 63.1257(c), 63.1258, 63.1259, and 63.1260 refer to § 63.1024(f)(1) through (3), Table 12 of this subpart, Table 17 of this subpart, § 63.8080, and § 63.8075, respectively; and the 90 percent control requirement in § 63.1253(f)(6)(i) means 95 percent for the purposes of this subpart.

TABLE 3 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR STORAGE TANKS—Continued

For each * * *	At * * *	You must * * *	Or you must * * *
2. Storage tank tank that meets either of the following criteria: ≥25,000 gal storing material that has a maximum true vapor pressure of total HAP ≥01.1 psia; or ≥20,000 gal to <25,000 gal storing material that has a maximum true vapor pressoure of total HAP total HAP ≥1.5 psia.	A new or reconstructed source	Route emissions through a closed-vent system to either: a control device that reduces organic HAP emissions by ≥90 percent by weight; or a flare that meets the performance requirements specified in §63.11(b); or a control device specified in §63.8010(f); and comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart.	Operate and maintain either an internal floating roof or an external floating roof designed, operated, inspected, and repaired as specified in §63.1063(a) through (e); or vapor balance according to §63.1253(f).

As required in §§63.8000(a)(4) and (e) and 63.8055(a)(3), you must meet each work practice standard in the following table that applies to your equipment leaks, closed-vent systems, and heat exchange systems:

TABLE 4 TO SUBPART HHHHH.—WORK PRACTICE STANDARDS FOR EQUIPMENT LEAKS, CLOSED-VENT SYSTEMS, AND HEAT EXCHANGE SYSTEMS

For each * * *	You must * * *
1. Piece of equipment that is in organic HAP service and is not described in §63.1019(c) through (e).	Comply with the provisions in §§63.1022 and 63.1024 through 63.1037 (except §63.1022(b)(5)).
2. Piece of equipment that is in organic HAP service 300 hr/yr	Identify the equipment as specified in §63.1022(b)(5).
3. Closed-vent system that is used to route emission to a control device that is used to comply with an emission limitation or work practice standard in Tables 1 through 3 or 5 of this subpart.	Conduct annual inspections, repair leaks, and maintain records as specified in §63.983(b), (c), and (d).
4. Closed-vent system that contains a bypass line that could divert a vent stream away from a control device used to comply with an emission limitation or work practice standard in Tables 1 through 3 and 5 of this subpart, except equipment such as low-leg drains, high bleed points, analyzer vents, open-ended valves or lines, rupture disks, and pressure relief valves needed for safety purposes.	Install, calibrate, maintain, and operate a flow indicator that determines whether vent stream flow is present. The flow indicator must be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere, and it must indicate either the presence of flow or the lack of flow at least once very 15 minutes; or secure the bypass line valve in the closed position with a car seal or lock and key configruation. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the vent stream is not diverted through the bypass line.
5. Heat exchange system that cools process equipment or materials in miscellaneous coating manufacturing operations.	Monitor and repair the heat exchange system according to §63.104(a) through (e), except that references in §63.104 to ''chemical manufacturing process units'' means the ''miscellaneous coating manufacturing operations for the purposes of this subpart, and references to §63.100 do not apply for the purposes of this subpart.

As required in §63.8000(a)(5) and (e), you must meet each emission limitation and work practice standard in the following table that applies to your transfer operations:

TABLE 5 TO SUBPART HHHHH.—EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For * * *	You must * * *	And you must * * *
Transfer operations for bulk loading of material containing ≥3.0 million gal/yr of HAP with a HAP partial pressure ≥1.5 psia.	Use a vapor balancing system designed and operated to collect displaced emissions and route them to: the storage tank from which the liquid being loaded originated; or another storage tank connected to a common header; or compress and route to a process where the HAP in the emissions predominantly meet one of, or a combination of, the following ends: recyled and or consumed in the same manner as a material that fulfills the same function in that process; transformed by chemical reaction into materials that are not organic HAP; incorporated into a product, and/or recovered; or Route emission streams through a closed-vent system to a control device that reduces HAP systems emissions by ≥75 percent by weight; or a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv and an outlet hydrogen halide and halogen concentration ≤20 ppmv, both corrected for supplemental gases as specified in § 63.8030(j); or a flare that meets the performance requirements of § 63.11(b), except that you may not vent halogenated vent streams to a flare; or a control device specified in § 63.8010(f); or a condenser that reduces the outlet gas temperature to: <2°C if the HAP partial pressure is ≥1.5 psia and <2.5 psia, or <-5°C if the HAP partial pressure is ≥2.5 psia.	Design and operate each vapor collection system such that HAP collected at one loading arm will not pass through another loading arm to the atmosphere; and prevent pressure relief devices from opening during loading; and comply with the work practice standards for closed-vent systems specified in Table 4 of this subpart; and for any halogenated streams that are controlled with a combustion device, you must also comply with the emission limitations in Table 6 of this subpart; and vapor collection equipment for tank trucks and railcars must be compatible with the transfer operation's vapor collection system, and the systems must be connected when material is transferred.

As required in § 63.8000(a)(6) and (e), you must meet each emission limitation in the following table that applies to your halogenated vent streams that are controlled with a combustion device:

TABLE 6 TO SUBPART HHHHH—EMISSION LIMITATIONS FOR HALOGENATED VENT STREAMS THAT ARE CONTROLLED WITH A COMBUSTION DEVICE

For each * * *	You must * * *
Halogenated vent stream from a process vessel, wastewater, or transfer operation controlled with a combustion device.	Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halides and halogens by ≥95 percent by weight or to a concentration ≤20 ppmv.

As required in §§ 63.8000(d) and (e), 63.8040(b), and 63.8055(a)(1)(i)(C), you must meet each operating limit in the following table that applies to your control devices, recovery devices, and wastewater treatment units:

TABLE 7 TO SUBPART HHHHH.—OPERATING LIMITS AND WORK PRACTICE STANDARDS FOR CONTROL DEVICES, RECOVERY DEVICES, AND WASTEWATER TREATMENT UNITS

For each * * *	With inlet HAP levels * * *	You must * * *
1. Water scrubber	≥1 ton/yr	Maintain the daily or block average scrubber liquid flow rate or pressure drop at or above the value established during the initial compliance determination.
2. Caustic scrubber	≥1 ton/yr	Maintain the daily or block average scrubber liquid flow rate or pressure drop at or above the value established during the initial compliance determination; and maintain the daily average pH of the scrubber effluent at or above the value established during the initial compliance determination.
3. Condenser	≥1 ton/yr	Maintain the daily or block average condenser outlet gas temperature at or below the value established during the initial compliance determination.

TABLE 7 TO SUBPART HHHHH.—OPERATING LIMITS AND WORK PRACTICE STANDARDS FOR CONTROL DEVICES, RECOVERY DEVICES, AND WASTEWATER TREATMENT UNITS—Continued

For each * * *	With inlet HAP levels * * *	You must * * *
4. Regenerative carbon adsorber	≥1 ton/yr	For each regeneration cycle, maintain the regeneration frequency, temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and regeneration stream flow rate within the operating levels established during the initial compliance determination; and you conduct a check for bed poisoning in accordance with manufacturer's specifications at least once per year.
5. Thermal incinerator	≥1 ton/yr	Maintain the daily or block average temperature of gases exiting the combustion chamber at or above the value established during the initial compliance determination.
6. Catalytic incinerator	≥1 ton/yr	Maintain the daily or block average temperature of the gas stream immediately before the catalyst bed at or above the value established during the initial compliance determination; conduct an annual catalyst test, or, once per quarter, verify that the temperature difference across the catalyst bed under the same conditions as in the initial compliance determination is no lower than 90 percent of the value established during the initial compliance determination.
7. Process heaters and boilers for which the vent streams are not introduced with the primary fuel or the design heat input capacity is <44 MW.	≥1 ton/yr	Maintain the daily or block average temperature of the gases exiting the combustion chamber at or above the value established during the initial compliance determination.
8. Any control or recovery device	<1 ton/yr	Follow the applicable procedures described in your Precompliance report, according to § 63.8030(i), for demonstrating that the control device is operating properly.
9. Design steam stripper	At any level	Maintain the daily or block average steam-to-wastewater ratio ≥0.04 kg/liter, wastewater feed temperature or column temperature ≥95°C, and wastewater loading ≤67,100 liters per hour per square meter.
10. Biological treatment unit	At any level	Maintain the TSS, BOD, and biomass concentration established in your discharge permit. unit, except for a design steam stripper
11. Nonbiological wastewater treatment unit, except for a design steam stripper.	At any level	Maintain the appropriate parameters within levels specified in your Precompliance report and approved by the permitting authority.

As required in § 63.8030(c), you must conduct performance tests in accordance with the requirements in the following table:

TABLE 8 TO SUBPART HHHHH.—REQUIREMENTS FOR PERFORMANCE TESTS

For each * * *	You must * * *	Using * * *	According to the following requirements * * *
1. Vent stream	Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
2. Vent stream	Determine velocity and volumetric flow rate;.	Method 2, 2A, 2C, or 2D of appendix A to part 60 of this chapter.	Non applicable.
3. Vent stream	Conduct gas molecular weight analysis.	Method 3 in appendix A to part 60 of this chapter.	Non applicable.
4. Vent stream	Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	Non applicable.

TABLE 8 TO SUBPART HHHHH.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each * * *	You must * * *	Using * * *	According to the following requirements * * *
5. Vent stream controlled in a non-combustion device.	a. Measure percent reduction of organic HAP or TOC, or.	i. Method 18 in appendix A to part 60 of chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14), or.	Measure inlet and outlet mass emissions and calculate the overall percent reduction of organic HAP according to the procedures in § 63.8030(c)(5); and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(11).
		ii. Method 25A in appendix A to part 60 of this chapter.	Measure inlet and outlet mass emissions and calculate the overall percent reduction of TOC according to the procedures in § 63.8030(c)(6).
	b. Measure total organic HAP or TOC outlet concentration.	i. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14), or.	Measure the outlet concentration of each organic HAP present in the inlet stream and calculate the total organic HAP emission concentration according to the procedures in § 63 8030(c)(7); and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(11).
		ii. Method 25A in appendix A to part 60 of this chapter.	Measure the outlet concentration of TOC and report the results as ppmv carbon according to the procedures in § 63.803(c)(8).
6. Vent stream controlled in a combustion device.	a. Measure percent reduction of organic HAP or TOC, or.	i. Method 25/Method 25A in appendix A to part 60 of this chapter, or.	Measure inlet and outlet mass emissions, as carbon, and calculate the overall percent reduction of TOC according to the procedures in § 63.8030(c)(9).
		ii. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in § 63.14).	Measure the inlet and outlet mass emissions for each organic HAP and calculate the overall percent reduction according to the procedures in § 63.8030(c)(5). Note: The total outlet mass emissions is determined for the each organic HAP identified and quantified in the inlet gas stream; and if you use ASTM D6420–99, comply with the requirements specified in § 63.2470(c)(11).
	b. Measure total organic HAP or TOC outlet concentration.	i. Method 25A in appendix A to part 60 of this chapter, or	Measure the outlet concentration on an as carbon basis according to the procedures in § 63.8030(c)(8)
		ii. Method 18 in appendix A to part 60 of this chapter.	Measure the outlet concentration of each organic HAP contained in the inlet stream to the combustion device and calculate the total organic HAP concentration of the outlet emissions according to the procedures in § 63.8030(c)(7); and if you use ASTM D6420–99, comply with the requirements in § 63.2470(c)(11).
7. Vent stream	Measure hydrogen halide and halogen concentrations.	Method 26 or 26A in appendix A to part 60 of this chapter.	According to the procedures in § 63.8030(c)(10)
8. Wastewater samples	a. Measure HAP concentration	i. Method 305 in appendix A of this part.	Comply with the procedures in § 63.1257(b)(9)(vi).
		ii. Method 624, 625, 1624, 1625 in appendix A to part 136 of this chapter.	Comply with the procedures in § 63.1257(b)(10)(vi).

TABLE 8 TO SUBPART HHHHH.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each * * *	You must * * *	Using * * *	According to the following requirements * * *
		iii. Method 8260 or 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992.	As an alternative you may use any more recent updated version of Method 8260 or 8270 that we publish. To use these methods, you must maintain a formal quality assurance program consistent with either section 8 of Method 8260 or Method 8270, and this program must include the following elements related to measuring concentrations of volatile compounds: documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps; documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis; measurement of the average accuracy and precision of the specific procedures, including field duplicates field spiking of the material source before or during sampling with compounds having similar characteristics to the target analyte.
		iv. Other EPA Methods	Use procedures specified in the method, validate the method using the procedures in §63.1257(b)(10)(iv)(A) or (B), and comply with the procedures in §63.1257(b)(1)(vi).
		v. Methods other than an EPA Method.	Use procedures specified in the method, validate the method using the procedures in §63.1257(b)(10)(iv)(A) and comply with the procedures in §63.1257(b)(10)(vi).
9. Vent stream controlled using a flare.	a. Determine compliance with visible emissions provisions.	Method 22 in appendix A to part 60 of this chapter.	Non applicable.
	b. Determine heating value of gas being combusted.	i. Method 18 in appendix A to part 60 of this chapter or ASTM D6420–99 (incorporated by reference as specified in §63.14) to determine the organics concentration, and	Use the equations in §63.11(b)(6) to calculate the heating value.
		ii. ASTM D1946–77 (incorporated by reference as specified in §63.14) to determine the hydrogen and carbon monoxide concentrations, and	
		iii. ASTM D2382–76 (incorporated by reference as specified in §63.14) to determine heats of combustion if published values are not available or cannot be calculated.	

TABLE 8 TO SUBPART HHHHH.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each * * *	You must * * *	Using * * *	According to the following requirements * * *
	c. Determine the actual exit velocity for steam-assisted and non-assisted flares.	i. Method 2, 2A, 2C, or 2D in appendix A to 40 CFR part 60 to determine the volumetric flow rate.	A. Divide the volumetric flow rate by the unobstructed (free) cross-sectional area of the flare tip to calculate the actual exit velocity, or B. If the actual exit velocity is ≥60 feet per second, use the heating value calculated according to the procedures in entry 9.b. of this table in the appropriate equation in § 63.11(b)(7)(ii) or (iii) to calculate the maximum permitted velocity.

As required in §§ 63.8025(a), (b), and (c), 63.8030(a), and 63.8040(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your process vessels as specified in the following table:

TABLE 9 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Portable process vessel >250 gal at an existing source.	Equip with a cover	You have installed a cover and document this fact in the notification of compliance status.
2. Stationary process vessel >250 gal at an existing source.	Equip with a tightly-fitting vented cover or lid and route emissions through a closed-vent system to a control device that reduces HAP emissions by ≥75 percent.	You determine total uncontrolled emissions to the control device in accordance with § 63.1257(d)(2)(i) and (ii), and you determine controlled emissions for the process vessel based on the results of a performance test or design evaluation conducted according to § 63.1257(d)(3); and based on the performance test or design evaluation, you determine the control device reduces HAP emissions by ≥75 percent by weight; and during the performance test or design evaluation, you establish operating limits for the control devices in Table 7 of this subpart, as applicable, in accordance with the requirements specified in § 63.8030(d), (e), or (f); and you have a record of how you established the operating limits.
3. Portable and stationary vessels >250 gal at a new source.	Equip with a tightly fitting vented cover or lid and route emissions through a closed-vent system to a control device that reduces organic HAP emissions by ≥95 percent.	You determine total uncontrolled emissions to the control device using the procedures in § 63.1257(d)(2)(i) and (ii); and you determine controlled emissions for the process vessel based on the results of a performance test or design evaluation conducted according to with § 63.1257(d)(3); and based on the performance test or organic HAP emissions by ≥95 percent by weight; and during the performance test or design evaluation, you establish operating limits for the control devices in Table 7 of this subpart, as applicable, in accordance § 63.8030(d), (e), or (f); and you have a record of how you established the operating limits.
4. Stationary process vessel >250 gal at an existing source or a new source; portable process vessel >250 gal at a new source.	Equip with a tightly fitting vented cover or lid and route emissions through a closed-vent system to a control device that reduces emissions to an outlet total organic HAP or TOC concentration ≤20 ppmv.	You conduct a performance test using the test methods specified in § 63.1257(b)(1) through (6), as applicable, to show the outlet total organic HAP or TOC concentration is ≤20 ppmv; and during the performance test, you establish operating limits for the control devices in Table 7 of this subpart, as applicable, in accordance with § 63.8030(e) or (f); and you have a record of how you established the operating limits.

TABLE 9 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
	Equip with a tightly fitting vented cover or lid and vent emissions through a closed-vent system to a flare that meets the performance requirements specified in § 63.11(b).	You conduct an initial flare compliance assessment as specified in §§ 63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in § 63.11(b)(4), (6), and (7).
5. Stationary or portable process vessel >250 gal at an existing or new source.	Control emissions with a condenser that reduces outlet gas temperatures to a specific value.	You calculate and record the HAP partial pressure for the material in the process vessel; and you have results of continuous direct measurement of the condenser outlet gas temperature showing the temperature is <10°C if the HAP partial pressure is <0.7 kPa, or <2°C if the HAP partial pressure is ≥0.7 kPa and <17.2 kPa, or <−5°C if the HAP partial pressure is ≥17.2 kPa; and you include the results of the HAP partial pressure calculations and outlet gas temperature measurements in the notification of compliance status.

As required in §§ 63.8025(a), (b), and (c), 63.8030(a), and 63.8040(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your wastewater streams, waste management units, and liquid streams in open systems within miscellaneous coating manufacturing operations as specified in the following table:

TABLE 10 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN MISCELLANEOUS COATING MANUFACTURING OPERATIONS

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Waste management unit	Install a fixed roof, floating roof, cover, or enclosure to suppress emissions.	You design and install the fixed roofs, floating roofs, covers, and enclosures to meet the requirements enclosure to specified in §§ 63.133 through 63.137; and you conduct an initial inspection of the waste management unit for improper work practices and control equipment failures in accordance with the requirements specified in §§ 63.133 through 63.137 and 63.143(a).

TABLE 10 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN MISCELLANEOUS COATING MANUFACTURING OPERATIONS—Continued

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
2. Vent stream from a waste management unit	a. Vent emissions through a closed-vent system to: a control device that reduces organic HAP emissions by ≥95 percent by weight or to an outlet total oganic HAP or TOC concentration ≤20 ppmv; or a combustion device with a minimum temperature of 760° C.	You conduct either a performance test in accordance with the requirements specified in § 63.145(i) (except when § 63.145(i)(6) and (9) require concentration corrections to 3 percent O_2, the correction for supplemental gases in § 63.8030(g) applies for the purposes of this subpart) or a design evaluation in accordance with the requirements specified in § 63.139(d)(2). If the control device will be operated over a range of conditions, you are not required to test over the entire range. In such cases, you may supplement the performance test results with modeling and/or engineering assessments; and the performance test or design evaluation shows the organic HAP emissions are reduced by ≥95 percent by weight, or the total organic HAP or TOC emissions are reduced to an outlet concentration, corrected to account for supplemental gases, of ≤20 ppmv; and during the design evaluation or performance test, you establish operating limits for the control devices in Table 7 of this subpart, as applicable, according to § 63.8030(d), (e), or (f); and you have a record of how you established the operating limits during the design evaluation or performance test.
	b. Vent emission through a closed-vent system to a flare that meets the performance requirements of § 63.11(b).	You conduct an initial flare compliance assessment as specified in §§ 63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in § 63.11(b)(4), (6), and (7).
	c. Route emissions through a closed-vent system to a control device specified in § 63.8010(f).	You document in your notification of compliance status that you route emissions to a device specified in § 63.8010(f).
3. Affected wastewater stream.	a. Treatment options in § 63.138(b), (c), (e), (f), or (g).	You conduct either a performance test or a design evaluation in accordance with § 63.138(j); and the performance test or design evaluation shows the reduction required by § 63.138(b), (c), (e), (f), or (g), as appropriate, is achieved; and during the performance test or design evaluation for a biological treatment process, you establish operating limits for TSS, BOD, and biomass concentration in accordance with your discharge permit; and for a nonbiological treatment unit, you establish appropriate operating limits described in your approved Precompliance report; and you have a record of how you established the operating limits.
	a. Treatment in a design steam stripper i.e., § 63.138(d)) or a treatment unit in § 63.8010(f).	You document in your notification of compliance status that you treat wastewater in a design steam stripper or a treatment unit specified in § 63.8010(f).

TABLE 10 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS, WASTE MANAGEMENT UNITS, AND LIQUID STREAMS IN OPEN SYSTEMS WITHIN MISCELLANEOUS COATING MANUFACTURING OPERATIONS—Continued

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
4. Residual removed from an affected wastewater stream.	Control emissions	You comply with the requirements in entries (a) and (b) of this table for all waste management units used to convey, store, treat, or dispose of the residual; and you comply with one or more of the following: the requirements in entry 3. of this table for each residual that you treat in accordance with the requirements specified in § 63.138(k)(3); install equipment or establish procedures to recycle the residual to a production process, sell it for recycling, or return it to the treatment process; or you document in the notification of compliance status that you are treating the residual in a unit under § 63.8010(f).
5. Maintenance wastewater stream	Develop and implement a maintenance wastewater plan.	You developed the plan and have it available onsite for inspection at any time after the compliance date.
6. Liquid stream in open systems within miscellaneous coating manufacturing operations..	Comply with the requirements in Table 35 of subpart G, according to entry 6. in Table 2 of this subpart.	Document in the notification of compliance status the type of control you are using.

As required in §§ 63.8025(a), (b), and (c), 63.8030(a), and 63.8040(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your storage tanks as specified in the following table:

TABLE 11 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR STORAGE TANKS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Each affected storage tank	a. Operate and maintain a floating roof, or	You have a record of the vessel dimensions and capacity and identification of the liquid stored as specified in § 63.1065(a); and you inspect an IFR before initial filling and inspect an EFR within 90 days of initial filling.
	b. Vent emissions through a closed-vent system to a control device that reduces HAP emissions by ≥90 percent by weight, or.	You conduct a design evaluation or performance test in accordance with the requirements specified in § 63.985(b); and the performance test or design evaluation shows the control device reduces HAP emissions by ≥90 percent by weight; and during the performance test or design evaluation, you establish operating limits for the control devices specified in Table 7 of this subpart, as applicable; according to § 63.8030(d), (e), or (f); and you have a record of how you established the operating limits.
	c. Vent emissions through a closed-vent system to a flare that meets the performance requirements of § 63.11(b), or	You conduct an initial flare compliance assessment as specified in §§ 63.987(b)(3) and 63.997; and the visible emissions net hearting value, and exit velocity meet the requirements specified in § 63.11(b)(4), (6), and (7).
	d. Vapor balance	You document in the notification of compliance status that you are complying by vapor balancing and certify that the pressure relief device setting on the storage tank is ≥2.5 psig on the compliance date; and for the owner or operator of a reloading or cleaning facility, you: submit the written certification required by § 63.1253(b)(7)(i); and if you use a closed-vent system and control device to control emissions, you comply with entry 1.b. of this table.

As required in §§ 63.8025 (a), (b), and (c), 63.8030(a), 63.8040(a), and 63.8055(b)(6), you must demonstrate initial compliance with each work practice standard that applies to your equipment leaks, closed-vent systems, and heat exchange systems as specified in the following table:

TABLE 12 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS FOR EQUIPMENT LEAKS, CLOSED-VENT SYSTEMS, AND HEAT EXCHANGE SYSTEMS

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Piece of equipment in organic HAP service and not described in § 63.1019 (c) through (e).	Comply with §§ 63.1022 and 63.1024 through 63.1037.	You implemented an LDAR program by the compliance date.
2. Piece of equipment in organic HAP service <300 hr/yr.	Identify the equipment as specified in § 63.1022(b)(5).	You create a list with the required identification record by the compliance date.
3. Closed-vent system	Inspection equipment to identify and repair leaks.	You conduct an initial inspection of the closed-vent system and maintain records in accordance with § 63.983(b) and (c) by the compliance date; and you prepare a written plan for inspecting unsafe-to-inspect and difficult-to-inspect equipment in accordance with § 63.983(b) and (b) by the compliance date; and you repair any leaks and maintain records in accordance with § 63.983(d).
4. Closed-vent system with a bypass line that could divert streams away from a control device.	Prevent flow through the bypass line	You document in the notification of compliance status that you either installed a flow indicator or that you secured the bypass line valve in accordance with entry d. in Table 4 of this subpart.
5. Heat exchange system used to cool process equipment or materials in miscellaneous coating manufacturing operations.	Monitor for and repair leaks	You determine that the heat exchange system is exempt from monitoring requirements because it meets one of the conditions in § 63.104(a)(1) through (6), and you document this finding in your notification of compliance status; or if your heat exchange system is not exempt, you either: identify in your notification of compliance status the HAP or other representative substance that you will monitor; or prepare and maintain a monitoring plan containing the information required by § 63.104(c)(1)(i) through (iv) that documents the procedures you will use to detect leaks by monitoring surrogate indicators of the leak.

As required in §§ 63.8025(a), (b), and (c), 63.8030(a), and 63.8040(a), you must demonstrate initial compliance with each emission limitation and work practice standard that applies to your transfer operations as specified in the following table:

TABLE 13 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
1. Transfer operations	a. Vapor balance, or	You document in the Notification of Compliance Status that you are complying with vapor balancing.
	b. Route emissions through a closed-vent system to a flare that meets the performance requirements of § 63.11(b), or	You conduct an initial flare compliance assessment as specified in §§ 63.987(b)(3) and 63.997; and the visible emissions, net heating value, and exit velocity meet the requirements specified in § 63.11(b)(4), (6), and (7).

TABLE 13 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS—Continued

For * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
	c. Route emissions through a closed-vent system to a control device that reduces HAP by ≥98 percent by weight, or to an outlet total organic HAP or TOC concentration and outlet hydrogen halide and halogen concentration ≤20 ppmv, or	You conduct a design evaluation or performance test according to the requirements of § 63.985(b); and the performance test or design evaluation shows the HAP emissions are reduced by ≥98 percent by weight, or the emissions are reduced to outlet total organic HAP or TOC concentrations ≤20 ppmv as TOC and ≤20 ppmv of hydrogen halides and halogens, both corrected for supplemental gases in accordance with § 63.8030(g); and during the performance test or design and evaluation, you establish operating limits for the control devices specified in Table 7 of this subpart, as applicable, in accordance with § 63.8030(d), (e), and (f); and you have a record of how you determined the operating limits.
	d. Route emissions through a closed-vent system to a control device specified in § 63.8010(f).	You document in the notification of compliance status that you route emissions to a device specified in § 63.8010(f).

As required in §§ 63.8025(a), (b), and (c), 63.8030(a), 63.8040(a), and 63.8055(b)(5), you must demonstrate initial compliance with each emission limitation that applies to your halogenated vent streams that are controlled with a combustion device as specified in the following table:

TABLE 14 TO SUBPART HHHHH.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS FOR HALOGENATED VENT STREAMS CONTROLLED WITH A COMBUSTION DEVICE

For each * * *	For the following standard * * *	You have demonstrated initial compliance if * * *
Halogenated vent stream	Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halides and halogens by ≥95 percent by weight or to ≤20 ppmv.	You conduct a performance test according to the procedures specified in § 63.997; and the performance test shows the halides and hydrogen emissions are reduced by at ≥95 percent by weight or to ≤20 ppmv; and you establish operating imits for the halogen reduction device during the performance test, and you have a record of how you determine the limits.

As required in §§ 63.8050(a) and 63.8080(c), you must demonstrate continuous compliance with each emission limitation that applies to you as specified in the following table:

TABLE 15 TO SUBPART HHHHH.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

For each * * *	For the following standard * * *	You must demonstrate continuous compliance by * * *
Vent stream controlled with a condenser	Percent reduction or outlet concentration	Collecting the condenser outlet temperature according to § 63.8035(b); and reducing condenser outlet temperature data to daily or block averages according to calculations in § 63.8035(b); and maintaining the daily average condenser outlet temperature no higher than the level established during the initial performance test or design evaluation.

As required in §§ 63.8050(a), 63.8055(c)(1)(iv)(B), and 63.8080(c), you must demonstrate continuous compliance with each operating limit that applies to you as specified in the following table:

TABLE 16 TO SUBPART HHHHH.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For each * * *	For the following operating limit * * *	You must demonstrate operating continuous compliance by * * *
1. Thermal incinerator that is used to control an emission stream subject to an emission limitation and that has inlet HAP emissions emissions ≥1 ton/yr.	Temperature of gases exiting the comubstion chamber.	Collecting the temperature data according to § 63.8035(b); and reducing the temperature data to daily or block averages according to calculations in § 63.8035(b); and maintaining the daily or block average temperature of gases exiting the combustion chamber no lower than the value established during the initial performance test or design evaluation.
2. Catalytic incinerator that is used to control an emission stream subject to an emission limitation and that has inlet HAP emissions ≥1 ton/yr.	Temperature of the gas stream immediately before the catalyst bed and, if applicable, the temperature difference across the catalyst bed.	Collecting the temperature data according to § 63.8035(b); and reducing the inlet temperature data to daily or block averages according to calculations in § 63.8035(b); and maintaining the daily or block average temperature of the gas stream immediately before the catalyst bed no lower than the value established during the initial performance test or design evaluation; and if applicable, maintaining the quarterly reading of the temperature difference across the catalyst bed no lower than 90 percent of the value established during the initial compliance determination.
3. Boiler or process heater that is used to control an emission stream that is subject to an emission limitation, that has inlet HAP emissions ≥1 ton/yr, and for which the vent streams are not introduced with the primary fuel or the design heat input capacity is <44 MW.	Temperature of the gases exiting the combustion chamber.	Collecting the temperature data according to § 63.8035(b); and reducing the temperature data to daily or block averages according to calculations in § 63.8035(b); and maintaining the daily or block average temperature of the gas stream exiting the combustion chamber no lower than the value established during the initial performance test or design evaluation.
4. Regenerative carbon adsorber that has inlet emission streams containing ≥1 ton/yr of HAP.	The regeneration frequency, temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and the regeneration stream flow rate.	Collecting the data for each regeneration cycle; and conducting inspections, compliance checks, and calibrations according to § 63.8035(b)(4); and for regeneration cycle, maintaining the regeneration frequency, temperature to which the bed is heated during regeneration, temperature to which the bed is cooled within 15 minutes of the completion of the cooling phase, and the regeneration stream flow rate within the operating levels established during the initial performance test or design evaluation.
5. Water scrubber with inlet HAP emissions ≥1 ton/yr.	Scrubber liquid flow rate or pressure drop	Collecting the flow rate or pressure drop or pressure drop data according to § 63.8035(b); and reducing the flow rate or pressure drop data according to § 63.8035(b); and maintaining the daily or block average flow rate or pressure drop no lower than the value established during the initial performance test or design evaluation.
6. Caustic scrubber with inlet HAP ≥1 ton/yr	Scrubber liquid flow rate or pressure drop; and pH of the scrubber effluent.	Collecting the scrubber liquid flow rate or pressure drop data according to § 63.8035(b); and collecting the scrubber effluent pH data according to § 63.8035(b); and reducing the scrubber liquid flow rate or pressure drop data to daily or block averages according to calculations in § 63.8035(b); and reducing the scrubber effluent pH data to daily or block averages according to the calculations in § 63.8035(b); and maintaining the daily or block average scrubber liquid flow rate or pressure drop, and the daily or block average scrubber effluent pH, no lower than the values established during the initial performance test or design evaluation.

TABLE 16 TO SUBPART HHHHH.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For each * * *	For the following operating limit * * *	You must demonstrate operating continuous compliance by * * *
7. Control device with inlet HAP emissions <1 ton/yr for which you received approval to comply with operating limits different from those described in entries (a) through (f) of this table.	As identified in your Precompliance report	Following the procedures in your approved Precompliance report to verify on a daily or block basis that the control device is operating properly.
8. Design steam stripper	Steam-to-wastewater ratio, wastewater temperature, and wastewater loading.	Collecting the steam mass ratio, wastewater flow rate, wastewater (or column operating) temperature data according to §63.8035(b); and reducing the data to daily or block averages according to §63.8035(b); and maintaining the steam-to-wastewater ratio ≥0.04 kg/liter, the wastewater temperature (or column operating temperature) ≥95°C, and the wastewater loading ≤67,100 liters per hour per square meter.
9. Nonbiological treatment unit, except a design steam stripper.	Parameters as approved by permitting authority.	Collecting and reducing data as specified by the permitting authority and maintaining parameter levels within the limits approved by the permitting authority.
10. Biological treatment unit	TSS, BOD, and the biomass concentration	Collecting the data at the frequency approved by the permitting authority and using methods approved by the permitting authority. Maintaining the TSS, BOD, and biomass concentration within levels approved by the permitting authority.

As required in §§63.8050(a), 63.8055(c)(4), and 63.8080(c), you must demonstrate continuous compliance with each work practice standard that applies to you as specified in the following table:

TABLE 17 TO SUBPART HHHHH.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
1. Install a floating roof on a storage tank	Conducting the inspections in §63.1063(d) at the frequency specified in §63.1063(c); and repairing any failures detected during the inspection as specified in §63.1063(e); and maintaining records of inspections, repairs, floating roof landings, and vessel dimensions and capacity as specified in §63.1065.
2. Install emission suppression equipment for waste management units as specified in §§63.133 through 63.137.	Conducting semi-annual visual inspections of each fixed roof, cover, and enclosure for visible, audible, or olfactory indications of leaks as specified in §§63.133 through 63.137; and conducting inspections, repairing failures, and documenting delay or repair for each fixed roof, cover, and enclosure as specified in §§63.133 through 63.137; and maintain records failures and corrective actions; and for each floating roof installed on a wastewater tank, conducting inspections, repairing failures, and maintaining records as specified in entry 1. of this table for storage tanks.
3. Implement the LDAR requirements in §§63.1025 through 63.1037 ...	Performing the required monitoring on the required schedule, repairing leaks within the specified time period according to §63.1025 through 63.1037; and keeping records according to §63.1038(b).
4. Vent transfer operation emissions back to the process or originating vessel.	Conducting annual inspections, repairing leaks, and recording results in accordance with the requirements for closed-vent systems in entries (h) and (i) of this table.
5. Controlling emissions with a flare	Continuously monitoring for the presence of pilot flame as specified in §63.987(c) and keeping records of the monitoring results as specified in §63.998(a)(1).
6. Controlling emissions with a nonregenerative carbon adsorber	Monitoring the operating time during which the carbon adsorber is used; and replacing the cannister within the time interval established during the initial compliance determination.
7. Cover liquid streams in open systems within the miscellaneous coating manufacturing operations.	Complying with entry 2. of this table.
8. Inspect closed-vent systems	Conducting the inspections and maintaining records according to §63.983(b) and (c) and repairing leaks according to §63.983(d).

TABLE 17 TO SUBPART HHHHH.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For the following work practice standard * * *	You must demonstrate continuous compliance by * * *
9. Monitor bypass lines in close-vent systems	If using a flow indicator, ensuring that flow indicator readings are taken at least once every 15 minutes, maintaining hourly records of whether the flow indicator was operating and whether a diversion was detected at any time during the hour, recording all periods when the vent stream is diverted from the control stream or the flow indicator is not operating; or if you secure the bypass line valve in the closed-position, maintain a record that the monthly visual inspection of the seal or closure mechanism has been done; and recording the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out.
10. Develop and implement maintenance wastewater plan	Implementing the procedures in the plan for each wastewater stream according to §63.105(d), modifying and updating the procedures as needed according to §63.105(c), and maintaining records of the plan and updates according to §63.105(e).
11. Vapor balancing for storage tanks	Operating and monitoring the vapor balancing system as specified in §63.1253(f)(1) through (5), maintaining a record of DOT certifications required by §63.1253(f)(2), and maintaining a record of the pressure relief vent setting that shows it is ≥2.5 psig; and if you are the owner or operator of a reloading or cleaning facility, controlling emissions from reloading or cleaning as specified in §63.1253(f)(6) and (7).
12. Monitor outlet gas temperature for condensers used to control vents from process vessels that receive material with HAP partial pressures in ranges specified in Table 1 of this subpart.	Collecting the condenser outlet temperature according to §63.8035(b); and reducing condensor outlet temperature data to daily or block averages according to calculations in §63.8035(b); and maintaining the daily average condenser outlet temperature no higher than the level specified in Table 1 of this subpart for the applicable HAP partial pressure.
13. Inspect and repair heat exchange system	Monitoring for HAP compounds, other substances, or surrogate indicators at the frequency specified in §63.104(b) or (c), repairing leaks within the time period specified in §63.104(d)(1), confirming that the repair is successful as specified in §63.104(d)(2), following the procedures in §63.104(e) if you implement delay of repair, and recording the results of inspections and repair according to §63.104(f)(1).
14. Conduct annual catalyst test for catalytic incinerators	Conducting a catalyst test once per year that shows the activity of the catalyst is acceptable.

As required in §63.8075(a) and (b), you must submit each report that applies to you on the schedule shown in the following table:

TABLE 18 TO SUBPART HHHHH.—REQUIREMENTS FOR REPORTS

You must submit a(n)	The report must contain * * *	You must submit the report * * *
1. Precompliance report	The information specified in §63.8075(c)	At least 6 months prior to the compliance date; or for new sources, with the application for approval of construction or reconstruction.
2. Compliance report	The information specified in §63.8075(d)	Semiannually according to the requirements in §63.8075(b).
3. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event, and	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in §63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§63.10(d)(5)(ii)).

As specified in §63.8095, the parts of the General Provisions that apply to you are shown in the following table:

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.

Citation	Subject	Brief description	Explanation
§63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§ 63.2	Definitions	Definitions for part 63 standards ..	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals.	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; For section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; Correct malfunctions as soon as practicable; Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and startup, shutdown, malfunction plan; Content of SSMP.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission limits.	Only for flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes, except that §63.8025(a) specifies that you must conduct initial compliance demonstrations before the compliance date for existing sources in operation before the effective date.
§63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with. Test plan approval procedures; Performance audit requirements; Internal and External QA procedures for testing.	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls process vessels.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes, except that performance tests for process vessels must be conducted under worst-case conditions as specified in §63.8030 and Table 9 to this subpart.
§63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; Compliance is based on arithmetic mean of three runs; Conditions when data from an additional test run can be used.	Yes.
§63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; Must submit performance test data 60 days after end of test with the Notification of Compliance Status; Keep data for 5 years.	Yes.
§63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes.
§63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§63.8(a)(3)	[Reserved].		
§63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in §63.11 apply.	Yes.
§63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; Must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No. CMS requriements are specified in § 63.8045..	
§ 63.8(c)(4)(i)–(ii)	CMS Requirements	Continuous opacity monitoring systems (COMS) must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Only for the alternative standard, but § 63.8(c)(4)(i) does not apply because the alternat4ive standard does not require COMS.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No. Subpart HHHHH does not contain opacity or VE limits.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements; Out-of-control periods.	Only for the alternative standard in § 63.8055.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-Control period, including reporting.	No, except for the alternative standard in § 63.8055.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Only for the alternative standard in § 63.8055.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Only for the alternative standard in § 63.8055, but § 63.8(e)(5)(ii) does not apply because the alternative standard does not require COMS. For existing sources, the performance evaluation must be completed prior to the compliance date, and the results must be included in the Notification of Compliance Status.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes, except you may also request approval using the Precompliance report.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Only for the alternative standard in § 63.8055.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1-hour averages computed over at least 4 equally spaced points.	Only for the alternative standard in § 63.8055, except that the requirements for COMS do not apply because subpart HHHHH has no opacity or VE limits, and § 63.8(g)(2) does not apply because data reduction requirements are specified in § 63.8035(a)(5).
§ 63.8(g)(5)	Data Reduction	Data that can't be used in computing averages for CEMS and COMS.	No. Data reduction procedures are specified in § 63.8045(b)
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup; Contents of each notification.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No. Subpart HHHHH does not contain opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; Notification using COMS data; Notification that exceeded criterion for relative accuracy.	Only for the alternative standard in § 63.8055.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; When to submit to Federal vs. State authority.	Yes, except subpart HHHHH has no opacity or VE limits, and § 63.8070(e)(1) specifies that the Notification of Compliance Status is due by the compliance date for existing sources in operation prior to the effective date, and 63.8070(e)(2) specifies that the Notification of Compliance Status is due within 240 days after the compliance date for all other affected sources.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after change.	Yes.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; When to submit to Federal vs. State authority; Procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements. Keep all records readily available; Keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.	Occurrence of each of operation (process equipment); Occurrence of each malfunction of air pollution equipment; Maintenance on air pollution control equipment; Actions during start-up, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control; Calibration checks; Adjustments, maintenance.	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emission limitations; Performance test, performance evaluation, and visible emission observation results; Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Only for the alternative standard in § 63.8055.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes
§ 63.10(c)(1)–(6),(9)–(15)	Records	Additional Records for CMS	Only for the alternative standard in § 63.8055.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS (now defined as deviations).	No. Recordkeeping requirements are specified in § 63.8080.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No. Subpart HHHHH does not contain opacity or VE limits.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; Written copy of performance evaluation; 3 copies of COMS performance evaluation.	Only for the alternative standard in § 63.8055, but § 63.10(e)(2)(ii) does not apply because the alternative standard does not require COMS.
§ 63.10(e)(3)	Reports	Excess Emission Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No. Reporting requirements are specified in § 63.8075.

TABLE 19 TO SUBPART HHHHH.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART HHHHH OF PART 63.—Continued

Citation	Subject	Brief description	Explanation
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations); Provision to request semiannual reporting after compliance for one year; Submit report by 30th day following end of quarter or calendar half; If there has not been an exceedance or excess emission (now defined as deviations); report contents is a statement that there have been no deviations.	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Must submit report containing all of the information in § 63.10(c)(5)–(13), § 63.8(c)(7)–(8).	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations) Requires all of the information in § 63.10(c)(5–13), § 63.8(c)(7–8).	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	No. Subpart HHHHH does not contain opacity or VE limits.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive.	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards.	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference.	Yes.
§ 63.15	Availability of Information	Public and confidential information.	Yes.

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Federal Register

Thursday,
April 4, 2002

Part III

Environmental Protection Agency

40 CFR Parts 148, 261, et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Paint Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities; Final Determination; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–7167–8]

RIN 2050–AE32

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Paint Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities; Final Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final determination not to list as hazardous certain wastes generated from the production of paint. EPA is making this determination under the Resource Conservation and Recovery Act (RCRA), which directs EPA to determine whether certain wastes from the paint production industry may present a substantial hazard to human health or the environment. EPA proposed concentration-based listings for certain paint waste solids (K179) and liquids (K180) on February 13, 2001. However, following a review of the public comments and supplemental analyses based on public comments, EPA has determined that the paint wastes identified in the February 13, 2001 proposal do not present a substantial hazard to human health or the environment. Therefore, EPA is making a final determination that these paint wastes are not listed hazardous wastes. Also, because the identified paint wastes are not listed hazardous wastes, EPA is not promulgating Land Disposal Restriction (LDR) treatment standards for these wastes, designating these wastes as Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substances with reportable quantities (RQs), or designating any of the constituents in these wastes as new Appendix VIII constituents.

EFFECTIVE DATE: May 6, 2002.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2002–PMLF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the beginning of the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the notice, contact Ms. Patricia Cohn of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. [E-mail address and telephone number: *cohn.patricia@epa.gov*, (703) 308–8675.]

SUPPLEMENTARY INFORMATION: The docket index and some supporting documents in the docket for this determination are available in electronic format on the Internet at: *http://www.epa.gov/epaoswer/hazwaste/id/paint.*

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

ACRONYMS USED IN THE DOCUMENT

Acronym	Definition
CAA	Clean Air Act.
CERCLA	Comprehensive Environmental Response Compensation and Liability Act.
CFR	Code of Federal Regulations.
CWT	Centralized Wastewater Treatment Facility (may also be referred to as a wastewater treatment facility, or WWTF).
ED	Environmental Defense (previously Environmental Defense Fund or EDF).
EO	Executive Order.
EPA	Environmental Protection Agency.
FR	Federal Register.
HAP	Hazardous Air Pollutant.
HQ	Hazard Quotient.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
LDR	Land Disposal Restriction.
MACT	Maximum Achievable Control Technology.
mg/kg	Milligram per kilogram.
MSDS	Material Safety Data Sheet.
NAICS	North American Industrial Classification System.
NESHAP	National Emission Standards for Hazardous Air Pollutants.
NPDES	National Pollutant Discharge Elimination System.
NTTAA	National Technology Transfer and Advancement Act.
AIM Rule	National Volatile Organic Compound Emissions Standards for Architectural Coatings and Industrial Maintenance Coatings (AIM) rule.
OEM	Original Equipment Manufacturing.
OSHA	Occupational Safety and Health Administration.
OMB	Office of Management and Budget.
OSWER	Office of Solid Waste and Emergency Response.
POTW	Publicly Owned Treatment Works.
ppm	Parts Per Million.
RCRA	Resource Conservation and Recovery Act.

ACRONYMS USED IN THE DOCUMENT—Continued

Acronym	Definition
RFA	Regulatory Flexibility Act.
RfC	Reference Concentration.
RFSA	Regulatory Flexibility Screening Analysis.
RIC	RCRA Information Center.
RQ	Reportable Quantity.
SBA	Small Business Administration.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
SIC	Standard Industry Code.
TC	Toxicity Characteristic.
TRI	Toxic Release Inventory.
UMRA	Unfunded Mandates Reform Act.
USC	United States Code.
UTS	Universal Treatment Standard.
VOC	Volatile Organic Compound.

The contents of this final determination are listed in the following outline:

I. Overview

I. Who Will Be Affected by This Final Determination?

Beginning January 1, 1999 all documents related to EPA's regulatory, compliance and enforcement activities, including rules, policies, interpretive guidance, and site-specific determinations with broad application, should properly identify the regulated entities, including descriptions that correspond to the applicable SIC codes or NAICS codes (source: October 9, 1998 USEPA memo from Peter D. Robertson, Acting Deputy Administrator of USEPA). The proposed listing determination had the potential to affect manufacturers of paints and coatings, as well as those who handle the wastes, such as landfills. However, we have decided not to list these wastes as hazardous under Subtitle C of RCRA program. Therefore, today's action will not have any effect on any entities.

B. What Is the ''Readable Regulations'' Format?

Today's final listing determination is written in ''readable regulations'' format, using: active rather than passive voice; plain language; a question-and-answer format; the pronouns ''we'' for EPA and ''you'' for the owner/generator; and other techniques to make the information in today's notice easier to read and understand. This format is part of our efforts toward regulatory re-invention. We believe this format helps readers understand the Agency's regulatory decisions and regulations (if any), which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

C. What Are the Statutory Authorities for This Final Determination?

We conducted this investigation and listing determination under the authority of Sections 2002(a), 3001(b), 3001(e)(2), 3004(d)-(m) and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), 6924(d)-(m)and 6927(a), as amended several times, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

D. Does This Final Determination Satisfy the Terms of the ED v. Whitman Consent Decree?

The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require EPA to make listing determinations for paint production wastes (see RCRA section 3001(e)(2)). In 1989, the Environmental Defense Fund (EDF), which recently changed its name to Environmental Defense (ED), filed a lawsuit to enforce the statutory deadlines for listing decisions in RCRA section 3001(e)(2). (*ED* vs. *Whitman,* D.D.C. Civ. No. 89–0598). To resolve most of the issues in the case, ED and EPA entered into a consent decree, which has been amended several times to revise deadlines for EPA action. Paragraph 1.d (as amended) of the consent decree addresses the paint production industry:

> EPA shall promulgate a final listing determination for paint production wastes on or before March 30, 2002. This listing determination shall be proposed for public comment on or before January 28, 2001. This listing determination shall include the following wastes: solvent cleaning wastes (K078), water/caustic cleaning wastes (K079), wastewater treatment sludge (K081), and emission control dust or sludge (K082) for which listings were suspended on January 16, 1981 (46 FR 4614), and off-specification production wastes.

Today's final determination satisfies EPA's duty under paragraph 1.d to promulgate listing determinations for the specified paint production wastes. Moreover, compliance with the consent decree fulfills EPA's duty to make listing determinations for the paint production industry under section 3001(e)(2) of RCRA.

II. Summary of Today's Action

In today's notice, we are finalizing a determination not to add paint production wastes to the list of hazardous wastes in 40 CFR 261.32. However, this determination does not in any way affect the status of these wastes under existing hazardous waste listings. Also, these wastes remain subject to a determination on whether or not they exhibit any of the hazardous waste characteristics (see 40 CFR 261.21 through 261.24).

We apply the listing criteria described in 40 CFR 261.11 to make listing determinations. We are making this listing determination based on the third criterion (see 40 CFR 261.11(a)(3)), which includes a number of factors for consideration as are discussed below. We assessed and considered these factors for each of the wastestreams identified in the consent decree that are generated by the paint production industry through the use of risk assessments and risk modeling, as well as consideration of other pertinent information. Today's final listing determination follows the elements of our listing decision policy that was presented in the proposed listing determination for wastes generated by the dye and pigment industries published in the **Federal Register** on December 22, 1994 (see 59 FR at 66073). This policy uses a ''weight-of-evidence'' approach in which calculated risk information is a key factor in making a listing determination.

Under 40 CFR 261.11(a)(3), there are eleven factors for determining whether a waste is capable of posing a ''substantial present or potential hazard to human health or the environment.'' Nine of these factors, as described generally below, are directly incorporated into EPA's completion of a risk assessment for the wastestreams of concern:[1]

- Toxicity (§ 261.11(a)(3)(i)) is considered in developing the health benchmarks used in the risk assessment modeling.
- Constituent concentrations and waste quantities (§§ 261.11(a)(3)(ii) and 261.11(a)(3)(viii)) are used to define the initial conditions for the risk evaluation.
- Potential to migrate, persistence, degradation, and bioaccumulation of the hazardous constituents and any degradation products (§§ 261.11(a)(3)(iii), 261.11(a)(3)(iv), 261.11(a)(3)(v), and 261.11(a)(3)(vi)) are all considered in the design of the fate and transport models used to determine the concentrations of the contaminants to which individuals are exposed.
- Plausible mismanagement and other regulatory actions (§§ 261.11 (a)(3)(vii) and 261.11(a)(3)(x)) are considered for establishing the waste management scenario(s) modeled in the risk assessment.

EPA conducted analyses of the risks posed by waste solids (K179) and waste liquids (K180) from the production of paint to assist in the determination of whether the wastes meet the criteria for listing set forth in 40 CFR 261.11(a)(3). In the preamble to the proposed rule (66 FR 10060), we discussed the human health risk analyses and ecological risk screening analyses EPA conducted to support our proposed listing determinations for K179 and K180. These analyses, as well as comments EPA received on the analyses, are further discussed in this notice in section IV below. We considered the results of the risk analyses, as well as comments received, and the results of analyses conducted in response to information provided by public commenters in finalizing our listing determinations for each wastestream. The risk analyses conducted in support of our proposed listing determination are presented in detail in the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination. Additional information and analyses conducted in response to comments received on our proposed rule are included in the Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination. This document is located in the docket for today's final determination.

A. Waste Liquids From Paint Manufacturing

We are making a final determination not to list waste liquids from paint manufacturing, because we now believe that the management scenario we used as the basis for the proposed listing, an off-site unlined surface impoundment, is not plausible. Information we received in comments indicates that management in any surface impoundment is a rare occurrence (we found only one case), and we have no indication that such units are unlined. Furthermore, we also found an error in our modeling equations that overestimated risks for most constituents of concern (discussed in detail in section IV.B.1). This factor, as well as the infrequent occurrence of other key constituents in the waste, further supports our decision not to list this waste. Finally, we believe that existing and upcoming regulations under RCRA and the Clean Air Act (CAA) will limit the levels of most

[1] The remaining two factors, damage cases as result of mismanagement and other factors (§§ 261.11(a)(3)(ix) and 261.11(a)(3)(xi)) are considered, as appropriate.

organic chemicals of concern in paint wastes.

B. Waste Solids From Paint Manufacturing

We also are making a final determination not to list waste solids from paint manufacturing. Correcting an error in modeling (discussed above and in detail in section IV.B.1) causes some constituents to drop from further consideration. In addition, after considering information we received in comments, as well as information we collected from the survey and elsewhere, we do not now believe the concentrations of the remaining constituents of concern in paint wastes would approach the listing levels. While one of the constituents (antimony) has some uses in paint formulations, we do not believe we have a reasonable basis to list this waste for this constituent. In particular, we did not find any surveyed facility that generated wastes with antimony concentrations at or above the listing level. Furthermore, we believe any paint waste solids with high antimony levels would be generated infrequently and not pose significant risks.

III. Summary of Proposed Rule

A. What Regulations Did EPA Propose?

In the February 13, 2001 proposed rule (66 FR 10060), we proposed two hazardous waste listings, K179 for paint manufacturing waste solids and K180 for waste liquids. We proposed a concentration-based listing, such that only wastes that met or exceeded certain listing levels for constituents of concern would have to be managed as hazardous under RCRA. We proposed that if you generate any of the identified paint manufacturing wastes (from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts; wastewater treatment sludges; or off-specification product, as specified in each proposed listing description), you would need to determine whether your waste contains any of the constituents of concern identified for each listing at a concentration equal to or greater than the concentration level set for that constituent.

As part of the K179 and K180 listing process, EPA also proposed to amend Appendix VIII of 40 CFR part 261 to add n-butyl alcohol, ethyl benzene, methyl isobutyl ketone, styrene, and xylenes to the list of hazardous constituents. We also proposed to add the constituents that served as the basis for the proposed listings to Appendix VII.

Under the Land Disposal Restrictions program, we proposed to: establish treatment standards for each of the two candidate listings; add styrene to the Universal Treatment Standards (UTS) Table in 268.48; add styrene and acrylamide to the F039 treatment standards applicable to hazardous waste landfill leachate; and designate styrene as an underlying hazardous constituent.

We also proposed to designate K179 and K180 as hazardous substances subject to the release reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and to adjust their one pound statutory reportable quantities (RQs).

We proposed that all generators could use knowledge of the waste to make an initial determination as to whether any of the regulated constituents are present in the waste. If you determined that none of the constituents were present, your wastes would not be considered K179 or K180 and you would have no further obligation for making a listing determination. However, the wastes would have remained subject to a determination on whether or not they exhibit any of the hazardous waste characteristics (see 40 CFR 261.21 through 261.24). If there was a possibility that the constituents of concern might be present, we proposed a two tiered approach for determining whether the wastes were hazardous at the point of generation. If your total projected annual generation of paint manufacturing waste solids was more than 40 metric tons, and/or more than 100 metric tons of waste liquids, you would need to test your wastes annually to determine whether constituent concentrations were below the listing levels. If your projected annual waste volumes were below these levels, you could use knowledge of the waste or testing to determine whether the wastes were hazardous. Alternatively you could assume your wastes were hazardous.

If your wastes met the listing description, they would have been subject to all applicable RCRA subtitle C hazardous waste requirements, including the LDR requirements. You can find more detailed discussions of the proposal in the preamble to the proposed rule and in the Background Documents we have placed in the rulemaking docket.

B. What Paint Manufacturing Wastes Are Within the Scope of the Consent Decree for This Listing Determination?

EPA based its decisions regarding the scope of the industries and wastes covered by the proposed listing on RCRA section 3001(e)(2) and the *ED* v. *Whitman* (D.D.C. Civ. No. 89–598) consent decree. The proposed rule applied to paint and coatings manufacturers.[2] It did not apply to miscellaneous allied products[3] or artist paint.

The consent decree required the Agency to make hazardous waste listing determinations on five types of paint production wastes. These wastes are:

(1) Solvent cleaning wastes as waste liquids and solids generated from equipment and tank cleaning operations;

(2) water and/or caustic cleaning wastes as waste liquids and solids generated from equipment and tank cleaning operations;

(3) wastewater treatment sludge as waste solids generated in on-site or captive wastewater treatment processes solely or primarily for treating paint production waste liquids;

(4) emission control dust or sludge as waste solids collected in a facility's particulate emission control devices such as baghouses;

(5) off-specification production wastes as waste solids.

We stated that the proposed listing would not apply to off-specification paint that a downstream entity decides to discard or send back to the manufacturer. However, once the manufacturer determined that unused product was destined for disposal, that off-specification product would be subject to the listing.

C. What Risk Assessment Approach Was Used for the Proposed Rule?

We conducted human health risk analyses and a screening level ecological risk assessment to support our proposed concentration-based listing determinations. The human health risk assessments that we conducted to support the listing determination included four primary tasks: (1) Selecting constituents of potential concern in waste, (2) evaluating plausible waste management scenarios, (3) calculating exposure concentrations by modeling the release and transport of the constituents from the waste management unit to the point of exposure, and (4) calculating waste concentrations that are unlikely to pose unacceptable risk.

In choosing potential constituents of concern, we identified commonly used,

[2] Including, but not limited to, entities who manufacture: paints (including undercoats, primers, finishes, sealers, enamels, refinish paints, and tinting bases), stains, varnishes (including lacquers), product finishes for original equipment manufacturing and industrial application, and coatings (including special purpose coatings and powder coatings).

[3] Not included were paint and varnish removers, thinners for lacquers and other solvent-based paint products, pigment dispersions or putty.

potentially hazardous constituents that could pose unacceptable risk if present in mismanaged paint manufacturing wastes. In addition, we selected constituents for which SW–846 test methods were available and for which we had access to toxicity, fate, and transport data with which to conduct a risk assessment (see 66 FR 10084).

Establishing plausible exposure scenarios depended on the way a particular waste was being or could be managed. We reviewed current waste handling practices reported in the RCRA 3007 survey and based on that chose to model four waste management scenarios: (1) Waste solids disposed in industrial nonhazardous waste landfills; (2) waste liquids stored and treated in off-site tanks at centralized wastewater treatment facilities (CWTs) prior to discharge to a POTW or under an NPDES permit; (3) waste liquids disposed in surface impoundments at CWTs; and (4) waste liquids stored and treated in tanks on-site at paint manufacturing facilities prior to discharge to a POTW or under an NPDES permit.

We used information on the national distributions of waste management unit characteristics (e.g., size and waste capacity) collected in surveys conducted for other rulemakings to establish the characteristics of the off-site waste management units. On the other hand, we used information from the RCRA 3007 survey on the nature of on-site management units and on the quantities of waste solids and liquids sent by each facility to the four management practices of concern.

We determined that there are several pathways for releases from the management units. Each of the four waste management units can release vapor emissions to the air. Landfills can also release particulate emissions to the air from solids disposed of in landfills. Releases can also occur through leaching of waste into the subsurface from landfills and surface impoundments. We assumed that tanks were sufficiently impermeable that they were highly unlikely to release volumes of waste to the subsurface sufficient to pose an unacceptable groundwater risk.

Human receptors may be exposed to releases through a variety of routes, both direct and indirect. Direct routes include consumption of affected groundwater and inhalation of ambient air or air in the home contaminated by releases from use of affected groundwater. Indirect paths include consumption of contaminated food products such as vegetables, beef and dairy products, and fish. We conducted contaminant fate and transport modeling and indirect exposure modeling to determine what the concentrations will be in the media with which a human receptor comes into contact. There are a number of computer-based models and equations that we used to predict these concentrations.

As part of the characterization of the risk levels from human exposures to the constituents of concern, toxicity information on each constituent of concern was integrated with the results of the exposure assessment. Chronic human health benchmarks were used in this assessment to evaluate potential noncancer and cancer risks.

The calculated concentration levels we proposed represent the probabilistic results at the 90th percentile risk level based on individuals living closest to the waste management unit. In other words, for 90% of the receptor scenarios we evaluated, the concentration levels are lower than our chosen target cancer risk level of 1E–05 (one chance in 100,000) excess lifetime cancer risk for individuals exposed to carcinogens in the waste streams or, for noncarcinogens, the target hazard quotient (HQ) of 1.0.

In general, we relied on the risk assessment results to guide us in deciding which constituents would be most useful for defining which paint manufacturing wastes should potentially be listed hazardous wastes. We dropped constituents from further examination if the risk-based concentration levels for the waste exceeded or approached 100% of the waste mass because such conditions were unlikely to exist in the wastes we examined. We also chose not to include constituents that are already sufficiently regulated by the Toxicity Characteristic.

The preamble to the proposed rule provides a detailed discussion of EPA's risk assessment for the paint manufacturing listing determination (see 66 FR 10083). A full description of all risk analyses conducted in support of our listing determinations finalized in today's decision can be found in the risk assessment background documents available in the docket. (See Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination and Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination.)

D. Which Wastes Did EPA Propose To List as Hazardous?

1. Waste Solids From Paint Manufacturing That Meet Certain Constituent Concentration Levels (K179)

We proposed to list as hazardous those waste solids from paint manufacturing that meet certain constituent concentration levels for the following constituents: acrylamide, acrylonitrile, antimony, methyl isobutyl ketone, and methyl methacrylate. This proposed listing included waste solids generated by paint manufacturing facilities from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts; wastewater treatment sludges; or off-specification product.

We also proposed to use the listing concentrations as ''exit'' levels for residues from paint manufacturing waste solids (K179). The use of the listing concentrations as exit levels would terminate the applicability of the derived-from rule and, therefore, the treatment residues would no longer be considered a listed hazardous waste.

2. Waste Liquids From Paint Manufacturing That Meet Certain Constituent Concentration Levels, Unless Managed Under Certain Conditions (K180)

We proposed to list waste liquids from paint manufacturing that meet certain constituent concentration levels for the following constituents: acrylamide, acrylonitrile, antimony, ethylbenzene, formaldehyde, methyl isobutyl ketone, methyl methacrylate, methylene chloride, n-butyl alcohol, styrene, toluene, and xylene (mixed isomers). This proposed listing included waste liquids generated by paint manufacturing facilities from tank and equipment cleaning operations that use solvents, water, and/or caustic.

We proposed this listing as a contingent-based listing. That is, if your waste liquids are managed exclusively in tanks or containers prior to discharge to a POTW or under an NPDES permit, your waste would not be subject to the proposed listing and you would not need to make a hazardous waste determination for those wastes. We proposed this approach because we believe wastes managed in this manner do not pose sufficient risk to warrant hazardous waste regulation.

Due to the uncertainties in our assessment of the management of paint manufacturing liquids in surface impoundments, we also proposed an alternative option not to list waste liquids from paint manufacturing. Further details of the proposed listings

and the various options are contained in the proposed rule (66 FR 10108).

IV. What Is the Rationale for Today's Final Determination?

A. What Is the Basis for EPA's Final Determination Not To List Paint Production Waste Liquids?

We have decided not to list as hazardous waste liquids generated by paint manufacturing facilities. We proposed a hazardous waste listing, K180, for paint manufacturing waste liquids that contain any of the twelve constituents of concern at or above the designated listing levels. In the proposed rule, we based our listing levels on modeling we performed for a surface impoundment scenario. We found potential risks of concern from the management of liquid wastes in an off-site centralized wastewater treatment system with an unlined surface impoundment; thus, we proposed the K180 listing. However, we noted in the proposal (66 FR 10108) that we were also considering not listing this waste due to the uncertainties with the management practice that we modeled in our risk assessment. We received numerous comments disputing the plausibility of this scenario and questioning other assumptions we used in modeling. Furthermore, as noted in the discussion of risk assessment issues in section IV.B, we found an error in the model that overestimated risks for eight of the 12 constituents. Below we summarize the critical comments we received and present our rationale for not listing waste liquids from paint manufacturing.

1. Management Scenario

The Agency received eight comments from industry and industry associations stating that disposal in unlined surface impoundments is not a plausible waste management scenario. For example, one commenter noted that the listing proposal for liquid paint production wastes is driven by potential risks arising from unlined surface impoundments. However, EPA identified only one case where a surface impoundment was used to manage these wastes. The commenter stated that this limited waste management practice does not support a nationwide listing. In addition, the commenter argued that EPA should not rely on a management scenario as the basis for a hazardous waste listing unless it establishes a ''rational relationship'' between the wastes and the management scenario.

When researching possible risks from the management of liquid paint wastes in surface impoundments for the proposal, we contacted nine of the 24 off-site centralized wastewater treatment (CWT) facilities that were reported in the RCRA 3007 survey to receive liquid wastes from paint manufacturers. We found only one facility and it used lined surface impoundments. We extrapolated this finding to suggest that there may be other facilities with surface impoundments, and that perhaps as many as 4 or 5 CWT facilities that receive paint wastes may use surface impoundments of some kind.[4] One commenter contacted the remaining active CWT facilities (three were no longer in business) that were reported to receive paint manufacturing waste and found that none of the remaining facilities used surface impoundments. The commenter argued that, based on EPA's own statistics, there would only be at most one other unidentified surface impoundment in addition to the identified lined surface impoundment managing waste liquids from paint manufacturing. The commenter concluded that a surface impoundment, particularly an unlined surface impoundment, is not a plausible management scenario, and that using this speculative scenario overestimates potential risks from the disposal of paint manufacturing waste liquids.

After reviewing the information in the comments and reconsidering the available information, we agree with the commenters that the use of surface impoundments for treatment of paint manufacturing waste liquids appears to be even less frequent than we estimated at the proposal. Our data for the surveyed facilities show that one off-site CWT facility used surface impoundments to treat paint manufacturing wastes, and probably no more than two such facilities are likely to exist nationwide that accept liquid wastes from paint manufacturers.[5] The one facility that we found to use impoundments has only lined impoundments, and we have no indication that off-site unlined impoundments are used for this waste.[6] Therefore, we concur that the management scenario we modeled, an unlined surface impoundment, does not appear plausible, because the factual record does not support a finding that this management scenario is either currently in use or is likely to be used in the future (for further discussion of EPA's concept of plausible management see the proposed rule for solvent wastes at 61 FR 42323, August 14, 1996, and also the final determination for solvents at 63 FR 64384, November 19, 1998).

As noted in the proposed rule, we also believe that the level of protection afforded by a liner system could be significant for a surface impoundment, which will contain liquid wastes only during its operating life (66 FR 10108). A lined impoundment with a finite operational life (30 to 50 years) is less likely to release liquids; releases to the subsurface would be reduced due the liner and leachate collection system in place. If, however, leaks occurred in the liners of such an impoundment during its operating life, the unit can be drained and repaired before continued use. Therefore, we do not believe the risk analysis presented in the proposal for unlined impoundments can be applied to lined impoundments. For this reason, we are not listing the liquid paint wastes. We believe that our decision is further supported by the considerations presented in the following sections.

2. Estimates of Surface Impoundment Risks Were Likely Overstated

In the proposed rule, we also discussed the likelihood that EPA's groundwater modeling scenarios contain impoundments with characteristics that are unlikely for large off-site treatment facilities, i.e., small units with low flow rates and long retention times (66 FR 10108). This is because the database we used for impoundment parameters contained data for on-site units, which may not be representative of off-site commercial CWT facilities. This means that many of the small impoundments used in the probabilistic modeling contained a high fraction of paint wastes. We suggested that this may not be representative of actual off-site commercial treatment units, which are likely to be larger, and that paint wastes would make up a smaller fraction of wastewaters in such units. One commenter contacted the CWT facility that reported a surface impoundment and found that

[4] The commenter suggested that the number of possible impoundments estimated by EPA's contractor was 2–4, not the 4–5 EPA described in the proposal. However, we note that the estimate of 2–4 was for the sampled facilities, and that the estimates of 4 and 5 were derived for the larger number of relevant paint manufacturers in the database of interest (see the memo from Paul Denault, Dynamac Corp., to Dave Carver of EPA, October 4, 2000).

[5] See Table 4 in the memo from Paul Denault, Dynamac Corp., to Dave Carver of EPA, October 4, 2000. Knowing the ''true'' value for the number of impoundments for the facilities in the survey to be one, the number of impoundments for the total population of facilities of interest was estimated to be two.

[6] The 3007 Survey data also did not show any facilities using on-site surface impoundments for paint manufacturing wastes.

approximately 3% of all the liquid wastes accepted for surface impoundment treatment in 1998 came from the paint manufacturing industry. The commenter argued that if EPA used a more accurate estimate of the fraction of paint manufacturing wastes managed in surface impoundments (*e.g.,* 3%), then this would significantly reduce or eliminate risks in EPA's assessment.

After considering all the available information, we agree that the assumptions for the unit characteristics that we used for modeling likely resulted in an overestimate of possible risks from a surface impoundment. As noted in the proposal, the database of impoundments we used in modeling yielded a 90th percentile value of one for the fraction of paint manufacturing waste in impoundments, i.e., 100% of the liquid waste was assumed to be from paint manufacturing. While we did not attempt to quantify the effect of changing the waste fraction through modeling, we believe that using the much smaller waste fraction reported for the one known impoundment (3%) would reduce risks by over an order of magnitude. Thus, this is an additional factor that would make any significant risks from an impoundment scenario unlikely.

3. Impact of Modeling Error

We also uncovered an error in our modeling due to the assumptions we used to account for risks arising from residential use of groundwater (*e.g.,* showering). As we discuss in detail in section IV.B.1 below, correcting this error would significantly raise the listing levels for 8 of the 12 organic constituents (by about a factor of 50) that we proposed for liquid paint manufacturing wastes. When we consider the likely dilution that occurs for paint washed out during the cleaning of mixing tanks (estimated to be about a factor of 12.5 in the proposed rule, see 66 FR 10107), the levels of these chemicals in paints would approach or exceed 100% to generate wastewater concentrations at the increased listing levels.[7] Similarly, two of the four remaining chemicals already had levels that were high, *i.e.,* the proposed level for formaldehyde was 81,000 ppm and the level for n-butyl alcohol was 41,000 ppm. Thus, factoring in a dilution of at least 12.5 during wash out, the concentrations for these constituents in paint product also would approach unrealistic levels. When we factor in the likely overestimate of risk noted in the above section due to the waste fraction assumptions we used in the proposal, the listing levels would be another order of magnitude higher.

The two remaining constituents that would not be affected by the modeling error are acrylamide and antimony. As discussed in the later section on paint waste solids, we now believe that these two constituents are not likely to be present in paint wastes at the proposed listing levels, or to be present so infrequently that they would not cause a substantial hazard to human health and the environment. In reaching this conclusion, we reviewed the 3007 survey further to assess the potential for liquid wastes to contain these constituents and be disposed of in impoundments of any sort. In the 3007 survey, facilities reported the presence of acrylamide polymers in only two nonhazardous wash waters, and these were sent to POTWs, not off-site CWT facilities. Facilities reported antimony in only four nonhazardous wash waters and the reported levels were ''trace'' or well below the proposed listing level; three of the facilities sent their wastewaters to POTWs, while the other facility reported sending the treated wash water to a CWT facility. We contacted this generating facility and found it used a very small quantity of antimony-containing pigment in the manufacture of only a few paint batches per year. (This facility reported a single ingredient containing antimony out of hundreds of ingredients used in paint production.)

Considering the impact of using the much smaller waste fraction reported for the one known impoundment, and after correcting for the model error (as well as considering the infrequent occurrence of significant levels for key constituents), the constituent concentrations in liquid paint wastes are not likely to approach the corrected listing levels for an impoundment scenario, even if an impoundment scenario was a plausible mismanagement scenario.

4. Other Regulatory Programs

We received comments stating that EPA did not consider the full effect of existing or upcoming rules under the Clean Air Act (CAA) that would limit the potential risks from paint production wastes. Commenters cited several regulations, including the National Volatile Organic Compound Emissions Standards for Architectural Coatings and Industrial Maintenance Coatings (AIM) rule. They stated that regulations severely limiting the use of volatile organic compounds (VOCs) in paint products would greatly reduce VOCs in paint production waste as well. One commenter further indicated that, because our survey collected 1998 data, it does not take into account the changes that have or will be made in paint formulation to meet the AIM Rule regulatory levels.[8] This would include changes required by many states in ozone non-attainment areas, which have developed even more stringent VOC regulations than the National AIM Rule.

Commenters pointed out that there are currently 14 major federal National Emission Standards for Hazardous Air Pollutants (NESHAP) surface coatings categories with Maximum Achievable Control Technology (MACT) standards that have been (or shortly will be) issued for a wide variety of industries. The commenters said that these ''Surface Coating MACTs'' will force coating application facilities to use coatings with low levels of Hazardous Air Pollutants (HAPs) to avoid installing expensive control technologies. The commenters argued that many customers will demand the production of low-HAP coatings, because most MACTs will require at least a 90–95% reduction in surface coating HAP emissions. Noting that nearly all the proposed waste constituents of concern in the proposed rule are HAPs, the commenters suggested that eliminating most of the HAPs in paint products will eliminate most HAPs in paint production waste. Finally, commenters stated that the planned MACT covering paint manufacturers (Miscellaneous Organic Chemical and Coatings Manufacturing, due to be published) will similarly reduce HAPs in paint formulations, and consequently production wastes.

In general, we agree that the existing and upcoming regulations on air releases will limit the levels of many organic chemicals of concern in paint wastes. As we noted in the proposal (66 FR 10103), regulations that limit air releases from off-site CWT facilities are also likely to keep the levels of organic constituents low, including in impoundments that might exist. See subpart DD in 40 CFR part 63 sets NESHAPs for off-site waste and recovery operations, which may include

[7] The listing level for acrylonitrile would increase by a somewhat smaller factor due to the correction (i.e., by about a factor of 7, analogous to the increase found for waste solids) because its carcinogenic risk level becomes the critical endpoint after the correction. Thus, a listing level of about 65 ppm would result. Considering a dilution factor of 12.5 from washing out of a mixing tank, this would reqire a acrylonitrile level of over 800 ppm in the paint itself. For reasons noted in the discussion on waste solids, such levels in paint appear unlikely.

[8] The final rule entitled National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR part 59, subpart D) was published September 11, 1998 (FR 63 48848).

off-site centralized wastewater treatment facilities. The impacts of this and the other regulations cited on paint wastes are difficult to quantify. However, such standards provide incentives to reduce HAPs through source reduction or pretreatment to avoid costly engineering controls. Therefore, the impact of these other existing and potential regulatory controls contribute to our belief that listing of this waste is not warranted.

Finally, a significant fraction of paint manufacturing wastes is already RCRA hazardous waste, primarily due to the regulations for characteristic hazardous waste under 40 CFR 261.21 through 261.24. From our survey of the industry, we found that about 36% of the liquid wastes were coded and managed as characteristic or listed hazardous waste. The characteristic liquid wastes typically exhibited the characteristic of ignitability or toxicity, and the listed liquid wastes usually were classified as solvent wastes (F001 through F005). We believe the existing RCRA regulations provide controls for those liquid paint wastes that are most likely to contain many of the constituents of concern, *i.e.,* those with high solvent or organic content.

5. Conclusion for Paint Production Waste Liquids

We are making a final determination not to list waste liquids from paint manufacturing. As noted in Section II of today's notice, we applied the factors under § 261.11(a)(3) in making this listing determination. A key consideration is what constitutes a plausible management scenario for this waste (factor (vii) under § 261.11(a)(3)). After reviewing the comments and considering all the available information, we believe that the management scenario we modeled, an unlined surface impoundment, is not plausible. We find that management of liquid paint wastes in surface impoundments appears to be rare, and we have no indication that such units are unlined. Therefore, we are not listing paint production waste liquids.

This decision is supported by additional considerations. We considered most of the other factors under § 261.11(a)(3) as part of our risk assessment methodology (factors (i) through (viii), including constituent toxicity, constituent concentration, constituent fate and transport, waste volumes).[9] In this regard, we now believe that the unit characteristics we used for modeling impoundments likely resulted in an overestimation of possible risks. After correcting for a modeling error and considering the infrequent occurrence of key constituents, any remaining risks do not support a decision to list this waste, even if an unlined impoundment was plausible.

Finally, we considered the impact of other regulatory programs on the potential management scenarios and the associated risks (factor (x)). We find that the existing and upcoming regulations under the Clean Air Act (CAA) will limit the levels of many organic chemicals of concern in paint wastes. We also find that a significant portion of paint production waste liquid is already managed as hazardous waste under RCRA. Therefore, after considering all these factors we conclude that a listing of paint production waste liquids is not warranted.

B. What Is the Basis for EPA's Final Determination Not To List Paint Production Waste Solids?

We have decided not to list as hazardous waste solids generated by paint manufacturing facilities. We proposed a hazardous waste listing, K179, for paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the five constituents of concern at or above the levels listed in Table IV.B–1 below. We tentatively found potential risks of concern from the management of waste solids in an off-site Subtitle D industrial landfill. The paint manufacturing waste solids in the proposed listing were: (1) Waste solids generated from tank and equipment cleaning operations that use solvents, water and/or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product.

TABLE IV.B–1.—PROPOSED LISTING CONCENTRATION LEVELS FOR WASTE SOLIDS (K179)

Constituent	Concentration levels (mg/kg)
Acrylamide	310
Acrylonitrile	43
Antimony	2,300
Methyl Isobutyl Ketone	73,000
Methyl methacrylate	28,000

After the comment period closed, we discovered an error in the calculation of human exposures from showering in the groundwater model that resulted in over estimating exposure levels (discussed in detail in section IV.B.1). In addition, we received numerous comments objecting to the proposed listing based on issues related to: (1) Our interpretation and aggregation of the 3007 survey data on waste volumes and management practices and whether they resulted in an overestimation of waste volumes that were used as inputs to the risk assessment; (2) the statistical design and analysis of the 3007 survey and whether it resulted in unrealistically large waste volume estimates; and (3) the potential for constituents of concern to be present in the waste.

We discuss the correction to the showering model and the key issues commenters raised which influenced our final determination in the following sections. These issues are discussed in the order that we addressed them in our decision making. First, we corrected an error in the shower model that significantly overestimated inhalation exposures to noncarcinogens. As a result, two of the five potential constituents of concern were dropped from further consideration because their calculated listing concentration levels indicated they would not pose a risk. Second, we considered the public comments on our statistical analysis and use of the 3007 survey data to derive waste volumes that were key inputs to the risk assessment. As a result, we made some adjustments to our statistical analysis and derived adjusted waste volumes that we used to re-run the risk assessment. Finally, we considered the likelihood that constituents of concern would actually be present in the waste at concentrations that would pose an unreasonable risk to human health or the environment. We respond to public comments in the Paint Manufacturing Hazardous Waste Listing determination: Response to Comments Document (available in the docket for today's final determination).

1. Changes to the Risk Assessment

We modified the exposure component of the shower model for non-carcinogens to correct an error that we discovered in the risk analysis. The changes to the risk analysis for waste solids (described in the next paragraph) resulted in risk estimates which indicated that two of the five constituents (methyl isobutyl ketone and methyl methacrylate) were no longer of concern.

For the risk assessment in the proposed listing determination, we assumed that contaminants may be transported in groundwater to domestic groundwater wells where the groundwater is extracted and used for showering in addition to drinking water.

[9] Note that we also considered whether any damage cases arising from the mismanagement of paint manufacturing wastes (factor (ix)). We determined that the available data did not provide useful information for a listing determination (see 66 FR 10082–10083).

We assumed that an adult resident inhales vapors that are emitted from the water used for showering. Exposure while showering was the driving pathway of exposure for several constituents in the proposed listing. This exposure pathway is modeled with a set of equations (hereafter referred to as the ''Shower Model'') that estimate the concentration of the constituent in the air after it has volatilized from the water during showering. Based on a review of the model, we determined that the air concentration estimated in the shower was not adjusted for an average inhalation exposure during a 24-hour day. Rather, it was incorrectly compared directly to the noncancer inhalation benchmarks, also known as reference concentrations (RfCs), in order to calculate a hazard quotient. The RfC is a chronic health benchmark and reflects a concentration in air to which an individual can be continuously exposed without experiencing any adverse health effects. A hazard quotient is the ratio of an individual's chronic daily dose of a noncarcinogen to a reference concentration (an estimate of daily exposure that is likely to be without appreciable risk or deleterious effects over a lifetime).

The result of this direct comparison was that the human health hazard from non-carcinogens was based on an individual's exposure to air concentrations in the shower for 24 hours a day, every day. The air concentrations in the shower for the non-carcinogens should have been adjusted to account for the time the receptor is not showering. The non-cancer exposure component of the shower model has been modified to correct this error. For carcinogens, the exposure equations used in the proposal do account for the length of time spent in the shower so that the calculations for carcinogens were correct as proposed. Therefore, the listing levels for acrylamide were not affected by this change in the shower model. For antimony, the results do not change because antimony is not volatile and does not have an inhalation risk component from showering.

Table IV.B–2 contains both the proposed and the corrected risk-based concentration levels for the non-carcinogenic constituents (except antimony) we considered for the K179 waste solids listing proposal. The results are the total concentration in mg/kg for both the combined solid and emission control dust waste streams when managed in landfills. The ''corrected'' concentrations are what the concentrations would have been if there had not been an error in the shower model. The corrected concentrations were calculated using the original waste volume weights; thus, the only change in the risk assessment that is reflected in the table below is the correction of the shower model. The reason the acrylonitrile level did not increase as much as the others is due to the fact that the concentration level proposed was based on noncarcinogenic effects of acrylonitrile, whereas the corrected level is based on carcinogenic effects. That is, when the shower model correction was made, the concentration level based on noncarcinogenic effects increased to the point where carcinogenic effects are now considered to pose a greater risk and, therefore, are the basis for the corrected numbers.

TABLE IV.B–2.—RISK-BASED CONCENTRATION LEVELS FOR CONSTITUENTS OF CONCERN IN PAINT MANUFACTURING WASTES WHICH ARE AFFECTED BY RISK FROM INHALATION WHILE SHOWERING [1]

Constituent	Combined waste solids		Emission control dust waste	
	Proposal concentration level (mg/kg)	Corrected concentration level (mg/kg)	Proposal concentration level (mg/kg)	Corrected concentration level (mg/kg)
acrylonitrile	60	440	43	310
methyl isobutyl ketone	120,000	E	73,000	E
methyl methacrylate	41,000	E	28,000	E

[1] These levels are the concentrations in paint manufacturing waste that would potentially present unacceptable risk if met or exceeded. The ''corrected values'' shown in this table are calculated with the original facility weights used in the proposed listing.

E = risk-based waste concentration exceeds 1 million parts per million; therefore, these constituents were eliminated from the listing based on this finding.

2. RCRA Section 3007 Survey of Paint Manufacturers

Our primary source of data for this regulatory determination is a survey of paint manufacturers conducted under authority of RCRA section 3007. The purpose of the survey was to gather information about nonhazardous and hazardous waste generation and management practices in the U.S. paint and coatings manufacturing industry. As explained in the proposal, we used data from the 3007 survey of paint manufacturers for several purposes: (1) To provide a general assessment of the paint and coating industry's waste generation and management practices; (2) to identify plausible waste management scenarios that are the basis for our risk assessment and listing determination; (3) to provide data for risk modeling parameters such as waste types and amounts sent to specific management practices; and (4) to assess land disposal restrictions treatment capacity and potential economic impact on the entire universe of paint manufacturers.

The survey was a stratified random sample of 299 facilities identified as paint manufacturers in the Dun & Bradstreet data base. We stratified the sample to improve our coverage for various industry subsets that were most likely to generate large waste volumes and to identify the vast majority of waste management practices. The stratification divided the sampling universe into categories based on facility size, type of paint manufactured and Toxics Release Inventory (TRI) reporting status. Surveyed facilities were then randomly chosen from each category.

Each surveyed facility was assigned a weight representing the total number of facilities in the category and how likely it was for any facility to be sampled from that category. For example, if a category had ten facilities and two facilities were sampled, the weight assigned to each facility in the category would be five. We used these weights to extrapolate from the surveyed facilities to the sampling population so that we could estimate the various waste streams and waste amounts that were generated by the population of paint manufacturing facilities, as well as the frequency of waste management practices. Again, as an example, if a facility with a weight of five reported generating 100 tons of emission control

dust that were disposed of in a nonhazardous waste landfill, we counted that as five facilities, each generating 100 tons of emission control dust disposed of in a nonhazardous waste landfill. For risk modeling purposes, 100 tons of emission control dust was entered into the waste volume distribution five times. We did not analyze the total quantity of nonhazardous waste solids from all paint manufacturers going into a single landfill because this scenario never occurs. When individual surveyed facilities reported sending multiple waste streams to a single landfill or when more than one facility reported sending solid waste streams to the same landfill (based on name and address provided by survey respondents), we added those waste volumes to ensure that we accurately reflect the combined quantities of paint waste solids that are sent to a single management unit. We also used facility weights to extrapolate for total volumes of paint manufacturing waste generated by the universe of paint manufacturers.

3. Interpretation and Aggregation of Waste Volumes and Management Practices

For waste solids, we modeled one management scenario, disposal in an industrial nonhazardous waste landfill. The vast majority of waste solids are disposed of in municipal or industrial nonhazardous Subtitle D landfills, and, of these, about half go to industrial landfills. We did one risk assessment that combined the individual weighted waste volumes for all four solid waste streams that were reported being sent to Subtitle D landfills: tank and equipment cleaning sludges, wastewater treatment sludges, emission control dust, and off specification product. We did a separate assessment for emission control dust, using only the individual weighted waste volumes for dusts. The proposed listing description for K179 included all four solid waste streams in one waste code.

One trade association objected to our modeling an industrial landfill rather than a municipal landfill. As stated above, we chose to model an industrial landfill because about half of the wastes going to Subtitle D landfills go to industrial landfills. There are only two differences in modeling assumptions for industrial nonhazardous landfills as compared to municipal landfills. First industrial landfills are slightly smaller than municipal landfills so the quantities of paint manufacturing waste modeled in the industrial landfill are a relatively larger proportion of the total waste quantities going into the unit. Also, industrial nonhazardous landfills are assumed not to have daily cover. Both of these add to the conservatism of the protective constituent levels predicted by the risk assessment. Disposal in a Subtitle D industrial landfill is a plausible management scenario because approximately half of the facilities that directly land dispose their wastes send them to Subtitle D industrial landfills. The commenter did not provide any information to support modeling municipal landfills, as an alternative. Therefore, we continue to believe that modeling industrial landfills is an acceptable approach.

The same trade association also raised several issues concerning our interpretation and aggregation of waste volumes and our interpretation of waste management information provided by survey respondents, which they argue contributed to overestimating waste volumes and risks. (The commenter also raised a number of concerns regarding the statistical design of the survey and resulting data analysis which are discussed separately in the following section.) The first point the commenter raised was that two facilities inadvertently reported inaccurate waste volumes in the survey. Only one of these involved a solid waste stream; the facility submitted revised information which reduced the amount of nonhazardous wastewater treatment sludge sent to a landfill from 500 to 250 tons per year. We have made this correction and used the new waste volume in our revised risk analysis.

The same commenter claimed that we incorrectly estimated the waste volumes for one facility that reported two of the largest solid waste streams for emission control dust and off specification product. In order to convert waste amounts into volumes for input into the risk assessment models, we asked 3007 survey respondents to provide information on the amount of each waste stream they generate by weight in metric tons as well as the density of each waste stream. We used the density information to convert the weight of each waste stream into gallons. The commenter claimed that the two waste streams in question are from the production of powder coatings and have a low density of three to four pounds per gallon. The commenter argued that we used the wrong waste densities and, therefore, overestimated volumes of emission control dust and off specification paint from this facility. We have reviewed the data supplied by the facility in question and find that they supplied a density of three pounds per gallon for each of these two waste streams, which were the densities used in calculating their waste volumes. Therefore, we did not overestimate the volume of these waste streams.

The same commenter also argued that combining waste volumes for the four solid waste streams in the risk assessment artificially and arbitrarily inflated the risks associated with the wastes. Rather, they stated that EPA should have modeled the volumes for each waste stream separately. The commenter contended that manufacturing sites would handle each waste stream separately and likely dispose of them separately. Further, the commenter claims that we did not meet our obligation with regard to the scope of the listing determination by combining the solid waste streams, rather than assessing the risks of each separately. We disagree with this contention. We combined in one risk assessment only those waste volumes for different solid waste streams that were reported in the 3007 survey being sent to municipal or industrial nonhazardous Subtitle D landfills. Each waste stream reported separately as going to a unique facility was considered as a separate waste volume in the distribution used in the risk assessment. We only added together waste volumes that were actually sent to the same physical location and type of waste management unit.

In addition, a number of facilities reported that they collect and store different types of waste solids (or waste liquids) in the same containers, as they are generated from a batch production process, and then dispose of all the waste in a single waste management unit. Whether managed and transported separately by a paint manufacturer or combined before transport to a disposal facility, the vast majority of nonhazardous waste solids are managed in nonhazardous landfills, including 99 percent of emission control dust; 97 percent of wastewater treatment sludge; 86 percent of wash water sludge and 56 percent of off specification paint. We believe combining waste distributions from all these solid waste streams is appropriate, because it is a more accurate representation of the waste management practices reported in the survey and of the potential risks. It would only be appropriate to model each solid waste stream separately if each waste stream was being sent to a distinctive type of waste management practice, or if the waste characteristics for individual paint manufacturing solid waste streams are unique.

The commenter also argued that we arbitrarily used the risk assessment results from modeling emission control dust as the proposed listing

concentration levels because the concentrations were lower. We modeled emission control dust waste volumes separately to examine the potential risk from air releases from landfills, i.e., we assumed low moisture content in the emission control dust wastes and assessed risks from wind-blown releases. Our modeling showed that these low moisture wastes did not pose any significant risks via air releases; thus both the dust and combined solids results are driven by the groundwater pathway. In the proposal, we suggested using the listing levels for the dusts because the levels were slightly lower.

The differences in the proposed listing levels for dusts and combined solids were relatively small (combined solids levels were higher by about a factor of 1.5 for the constituents of concern). The slightly lower levels derived from the dust scenario are a result of the volume distribution for dust waste volumes. This is due to the fact that the individual emission control dust waste volumes generated from paint manufacturing tended to be larger. In the combined solids waste volumes, many reported sludge or off-specification paint waste volumes that were quite small. Therefore, even though the total volume of wastes for combined solids was higher, the dust volumes yielded somewhat lower listing levels.

As discussed above, modeling combined waste solids is an accurate representation of waste management practices reported in the 3007 survey and the most accurate representation of ground water risks associated with this disposal practice. Therefore, we conclude that listing levels for waste solids would more appropriately be derived from the combined solids modeling. As noted above, we found that many generators tended to combine waste solids for disposal and that the vast majority of waste solids are disposed of in nonhazardous landfills. Thus, it is plausible to consider the combined solids as a class of waste for potential listing and combined solids results are more representative of the waste category we proposed to list. However, as noted previously, we are not finalizing a listing for this category because we believe that the risks from waste solids do not warrant listing.

The same industry trade association also argued that we should not have modeled emission control dust in the combined solids assessment because the only constituent that would be a basis for listing emission control dust is antimony. They contend that we should not have modeled organic constituents in emission control dust because there is not a high incidence of emission control dust residual containing organic materials. The commenter noted that only one surveyed facility reported any of the proposed organic constituents of concern. That facility inaccurately reported methyl isobutyl ketone (MIBK) in their dust. The facility later submitted revised information to indicate that their dusts do not contain MIBK. As explained above, MIBK was eliminated from consideration as a listing constituent after correcting an error in the shower model.

However, we continue to believe our rationale is appropriate for modeling all of the potential constituents of concern in all waste streams for several reasons. First, we note that 32 surveyed facilities identified potential constituents of concern in their nonhazardous emission control dusts, including constituents such as cobalt, copper, barium, zinc, cadmium and chromium in addition to antimony. This also includes five different facilities reporting a total of eleven different organic constituents in their emission control dusts. In addition, we identified potential constituents of concern that are widely used raw materials in paint production, based on the available literature. The process for selecting these constituents is detailed in the proposal (pp. 10083—10087). Generally, these constituents are likely to occur in a number of different waste streams. We recognize that it is possible that a given constituent could occur in some solid waste streams and not in others, or at substantially different concentration levels. However, we did not have information available to indicate whether there were some constituents that would never occur in particular waste streams. We believe that modeling all constituents of concern for all similarly managed waste streams is a conservative approach to identify those that potentially pose unacceptable risk. In addition, under a concentration-based listing approach, if the constituents do not occur in one solid waste stream, like emission control dust, that waste stream could be managed separately as nonhazardous waste, provided the generator meets the applicable implementation requirements, e.g. certification that the waste does not contain the listing constituents.

This comment raises the broader question of whether the constituents of concern are likely to occur in the waste. We agree that this is a key question in making the listing determination. In addition to risk assessment results, there are a number of additional factors that we considered in making the listing determination. These are discussed below in section IV.B. 5 as the basis for our final determination not to list paint production waste solids as hazardous waste.

In summary, the 3007 survey provided us with a realistic picture of the types of wastes that are generated, waste volumes, and management practices being used. Our initial interpretation of the survey data, based on the information supplied to us by survey respondents, was accurate. While the commenter did identify several survey responses that facilities changed after the proposal was issued, the commenter did not present any information to support the contention that we used the data inappropriately. For purposes of refining our risk assessment, we changed the amount of wastewater treatment sludge for one facility from 500 tons to 250 tons, based on new data the facility provided. In addition, we agree that listing levels for constituents of concern should be based on the analysis results for combined solids waste volume distributions rather than for emission control dust alone. Therefore, the discussion below regarding potential regulatory concentration levels for the constituents of concern is based on levels for the combined solids.

4. Statistical Design and Analysis of the RCRA Section 3007 Survey Data for Estimating Waste Quantities

One industry trade association raised the following key issues concerning the statistical design and analysis of the RCRA section 3007 survey: (1) Whether use of the Dun and Bradstreet database to identify paint manufacturers to categorize facilities for the stratified random sample was appropriate; (2) whether mischaracterization of facilities in the stratified random sample led to overestimates of waste quantities; and (3) whether direct extrapolation from the sampling population to the universe of paint manufacturers led to overestimates of waste quantities.

Following review and consideration of these comments, and following the accepted statistical practice of post-survey refinement of the stratification of surveyed facilities, we adjusted the facility stratification approach and adjusted the statistical weighting procedure to make the sample distribution more representative of the entire paint manufacturing population. These adjustments improve our extrapolation from survey data to the paint universe and, hence, improve our estimates of waste quantity.

Summarized below are the major comments, our responses, and further statistical refinements we performed to

address the commenter's issues. In the following subsections, we discuss: (1) the database used for developing the survey; (2) the important aspects of the original sampling framework design criticized by some commenters; (3) the key statistical issues raised by the commenters and our efforts to refine the facility stratification and weighting scheme in response to comments; (4) the post-survey adjustments of statistical weights to improve data extrapolation; and, (5) our use of adjusted weights for the final risk assessment.

a. Use of the Dun and Bradstreet Database

As explained in the proposed rule (at 66 FR 10070), we used the Dun and Bradstreet database for developing our survey scheme because it provided the most thorough listing of paint manufacturers in the United States. Specifically, we used the following information contained in the Dun and Bradstreet database for developing the survey scheme: facility names and addresses, contact names and telephone numbers, annual sales volume data, and SIC codes for the types of paint or paint-related products manufactured. One commenter argued that EPA arbitrarily relied on outdated and unverified commercial corporate information instead of actual facility specific information. However, the commenter did not describe in their comments any alternative source of ''actual facility specific information'' readily available to us before conducting the survey. Nor did they identify an alternative source when directly asked.

Our only alternative to relying on this existing database would have been to collect the pre-survey information of interest (*e.g.*, facility size, paint types, etc.) from the entire universe of paint manufacturers for sample frame design and stratification. In light of the large number of potential paint manufacturers (1,764 listed under SIC Code 2851 in the July 1999 Dun and Bradstreet database), this was impractical. Under the Paperwork Reduction Act, Federal agencies are required to submit an Information Collection Request (ICR) to and receive approval from the Office of Management and Budget (OMB) prior to collecting substantially similar information from ten or more respondents in any 12-month period. Collecting pre-survey information would have required separate ICR approval and additional time to gather the information; but such time was not available to us under the consent decree. In the absence of ''actual facility specific information'' or pre-survey information of interest for all the facilities in the paint manufacturing facilities universe, we believe the Dun and Bradstreet database provided the best source of information for our survey, and we are continuing to use this database for the final determination today.

b. Original Statistical Design and Analysis of the RCRA Section 3007 Survey

For our RCRA Section 3007 survey of paint manufacturers (see 66 FR 10069—10072 on how the Agency designed the statistical, stratified random-sampling survey), we derived a sampling population of 884 facilities from the Dun and Bradstreet database purchased in July 1999.[10] This database contained a total of 1,764 facilities identified under SIC Code 2851. Discussed below are some aspects of our sample frame design and stratification that were criticized by some commenters.

We first screened the July 1999 database and removed the 880 facilities that fell into one of the following categories: apparent non-paint manufacturers, duplicates, no longer in the December 1999 database, outside of the scope of this listing determination, or found impossible to fully classify for facility stratification. We then classified the remaining 884 facilities into 12 strata based on three categorization criteria: paint types (architectural/special purpose, and OEM), sales volume (less than five million, five to twenty million, and greater than twenty million), and TRI status (whether the facility reported under TRI in 1997). The strata were intended to group those facilities we believed would have somewhat similar characteristics, for example, similar waste amounts and types of waste generated and similar waste management practices.

The sales volume data in the Dun and Bradstreet database contained a number of ''zero'' entries for a significant number of facilities. It was possible that some facilities did not sell any paints during the reporting period, or did not report their sales volume, or reported zero sales for other reasons. However, for the reasons discussed above, it was impracticable for us to contact every individual facility shown with a zero or missing sales volume. Because most facilities in the paint industry are relatively small, we believe it was reasonable to have classified those facilities with zero sales as ''small.''

Of the 880 facilities removed, 705 had insufficient information on the type of paint products manufactured to be fully classified into the various strata. Thus, we excluded the 705 entries from the sampling frame to increase the chances of obtaining useful data (e.g., waste management practices by in-scope paint manufacturers) for this listing determination. Nevertheless, these 705 facilities were still assumed to be represented by the sampling population of 884 facilities and thus were not excluded from the evaluation of paint manufacturing wastes. To relate the data collected from the surveyed facilities to the entire paint universe including the 705, we extrapolated statistically by using the percentages of facilities in the Dun and Bradstreet database that are represented by the surveyed facilities (66 FR 10072).

We applied a statistical weighting and bias correction procedure to produce unbiased estimates from our survey data. This was necessary because we had sampling rates that were not proportional to the facility population sizes within each strata. We then used the extrapolated waste quantity estimates for characterizing the entire paint manufacturers' universe, and for our economic impact analysis and waste treatment and management capacity analyses. For risk modeling purposes, we estimated a national waste quantity distribution for the 884 facilities included in the sampling frame. For the purposes of the risk assessment, we assumed the 884 facilities were proportionally the same as the 705 facilities.[11] Since the risk assessment would not be impacted by the number of facilities but only by the shape and nature of the distribution, this proportional handling of the 705 facilities had no impact on the results of the risk assessment.

One commenter argued that most paint manufacturing sites use the same equipment, same pollution control devices, have similar formulas and have similar manufacturing processes. Therefore, the commenter argued that EPA should have used a realistic, simpler extrapolation tool such as pound or gallon of waste per gallon of product produced. However, the commenter did not provide any specifics or necessary information on

[10] The July 1999 Dun and Bradstreet database we initially purchased for preliminary analysis contained no sales volume data. In December 1999, we purchased another version containing sales volume data as a supplement for sampling stratification.

[11] We assumed that the 705 facilities could be stratified in the same manner as the 884 facilities, such that both groups of facilities would have the same distribution of statistical weights and associated waste quantities, characteristics and management practices. In other words, the same distributions of waste stream data and waste volume percentiles could be developed from both sets for risk assessment.

how to apply its suggested approach. Therefore, we could not evaluate this approach. In addition, from our survey we learned that approximately 27% of paint manufacturers did not generate or dispose of any of the waste residuals of interest because they recycled or reused all paint residuals as feedstock in the manufacturing processes. Using the commenter's suggested ''simpler'' approach would flatly discount this 100% reuse/recycling scenario resulting in an overestimation of waste quantities and an inaccurate account of waste quantity distributions.

c. Commenter's Issues Concerning Incorrect Statistical Weights for Survey Responses Used To Calculate Waste Quantities

One commenter objected to our use of the statistical weights resulting from the sampling stratification to characterize the industry's waste quantities. This commenter also stated that EPA's weighting factors resulting from the sampling stratification were arbitrary and resulted in an overstatement of the total waste generated by the industry. In particular, this commenter argued that EPA used information from the survey to characterize the 705 facilities that could not be stratified for the survey. The commenter contended that this improper use of unverified data very likely mischaracterized the universe of paint manufacturers and led to an overestimation of waste quantities.

This commenter further argued that the Agency mischaracterized some large facilities as small and some TRI facilities as non-TRI facilities, and that those facilities were assigned incorrect weighting factors. The commenter cited specific errors in EPA's facility categorization and the weighting factors assigned to four facilities generating large waste quantities, indicating that the waste quantity distributions used for our risk assessment of waste solids were improperly driven by the incorrect weighting factors for the cited facilities. Two of the cited facilities (survey respondents) also submitted comments in support of this argument. One pointed out that EPA miscategorized its facility as small with sales less than $5 million based on the Dun and Bradstreet database when their 1998 sales volume was actually $109.1 million; the other commenter similarly said that its 1998 sales were actually $30 million, not the $7 million reported in the Dun and Bradstreet database. The first commenter stated that the weights for such miscategorized facilities should be corrected by moving these facilities to the correct strata. We do not agree with the commenter in this respect, as discussed below. But, we do accept the commenter's information as to the two miscategorized facilities as correct.

In response to the comment that the 705 facilities should have been included in the sampling frame, we did not include them in the sampling population for two key reasons. First, we could not distinguish paint and coatings manufacturers from manufacturers of products outside the scope of the listing determination. Second, we could not distinguish architectural/special purpose paints from original equipment manufacturing (OEM) paint types, and believed that this could be significant (based on survey data, we later decided not to distinguish between these).

In the Dun and Bradstreet database used to establish our stratification scheme, the 705 facilities were listed under a general Dun and Bradstreet SIC code, 2851 0000,[12] for undefined paint and allied paint products, some of which are not subject to this listing determination. In contrast, among the defined groups, we could distinguish between architectural/special purpose paint types (under code 2851 0100 through 0109) and OEM paint types (under code 2851 0200 through 0213), and remove those not of concern (*e.g.,* 2851 0104—paint driers; 2851 0300 through 0302—putty, wood fillers and sealers; 2851 04 through 0403—removers and cleaners). Since there was a greater degree of uncertainty in the group of 705 undefined facilities (about whether they might be subject to this listing determination) than the defined groups, and since we could not stratify the 705 facilities into the desired architectural/special purpose and OEM categories, we decided not to sample them. Nevertheless, as already indicated, we did include the 705 facilities when extrapolating waste quantities for the entire paint universe. We did this by assuming that the characteristics of the 705 facilities were proportionate to the characteristics of the sampling population. We used these quantities to estimate the economic impact of the proposed rule on paint manufacturing and our waste treatment and management capacity analysis.

Relative to the TRI status of certain facilities, we wish to clarify that the facilities classified in our TRI categories for the survey reflect those TRI generators that reported chemical releases in 1997 to land-based waste management units (landfills, surface impoundments, waste piles, etc.) of concern to this listing determination. Consequently, some surveyed facilities that reported only non-land-based releases (*e.g.,* air emissions, energy recovery) in 1997 were not included in the TRI categories for survey sampling. Moreover, some facilities in the sampling population that might have reported TRI chemical releases to land-based management units in the years before and/or after 1997 were not included in the TRI categories either. Concerning the three facilities that one commenter argued should have been classified into TRI instead of non-TRI categories, they did not report any chemical releases to land-based management units in 1997. For this reason, we did not reclassify them into TRI categories.

Next, the claim that the sampling or statistical weights resulting from the stratification are incorrect because some facilities were not classified into the appropriate strata reflects a misunderstanding of what weighting represents in probability sampling. The statistical weights assigned to facilities in the various sampling strata reflect or indicate the probability of a facility being sampled from the population in a stratum, depending on how the facilities were categorized for sample selection, not on their true status. For example, if 100 facilities were placed in one stratum and 10 facilities were randomly sampled, each sampled facility would have a weight of 10. Misclassification or miscategorization of some facilities does not make the weights incorrect. In particular, the two misclassified large facilities cited by the commenters may be representative of other large facilities potentially misclassified in the same manner. However, we recognize miscategorization could result in increased uncertainty because facility characteristics within the stratum, in this case waste generation rates, have a much broader range of values than anticipated. As such, the variability of estimates from survey data could be large. Our plan for post-survey adjustments to facility stratification and sampling weights, as described below, essentially treats the two large facilities that were misclassified in the ''small''

[12] Each entry in the Dun and Bradstreet database is identified by an 8-digit code, the first four being the same as SIC's and the next four being proprietary to Dun and Bradstreet that represent segregation of the paints, varnishes, lacquers, enamels, allied products, etc. in more detail. For example, code 2851 0000 refers to paints, varnishes, lacquers, enamels, and allied products; code 2851 0100 refers to paint and paint additives; code 2851 0104 refers to paint driers; code 2851 0200 refers to lacquers, varnishes, enamels, and other coatings; code 2851 0208 refers to polyurethane coatings; code 2851 0300 refers to putty, wood fillers and sealers; code 2851 0400 refers to removers and cleaners. For more details, see the Listing Background Document for Paint Manufacturing Listing Determination available in the public docket.

facility strata as representative of other large facilities that could have been similarly miscategorized in the same database. This approach reduces the variability of survey estimates.

Although our stratified random-sampling survey was designed in a manner to ensure the best possible coverage, we acknowledged in the proposed rule (66 FR 10072) that, as in any other survey, there was uncertainty in our survey due to potential data source and sampling errors. Post-survey adjustment of sampling weights (*i.e.,* re-weighting) to correct miscategorization and improve the certainty in the results involves a process called post-stratification and it is a common and appropriate statistical practice to help reduce the uncertainty associated with estimates from the sampling survey. There are well known statistical techniques (*e.g.,* Cochran, W.G. 1977 [13]) that can be used for post-stratification and are widely employed in U.S. national surveys. Therefore, we developed post-survey adjustments to the survey weights to address the issues raised by the commenter concerning the miscategorization of facilities and the inappropriate extrapolation to the additional 705 facilities that were not included in the sampling population. We did not simply reclassify the strata of the two miscategorized facilities (due to incorrect sales volume information in the Dun and Bradstreet database) identified by the commenters. Their strata status cannot be simply changed by moving them into another stratum because that would violate the underlying probability structure of the survey. Some other surveyed facilities may be similarly mischaracterized in the same database, especially in regards to the facilities that had zero sales or missing data listed in the Dun and Bradstreet database. Unless accurate sales data can also be obtained for all the other facilities in the target population, it is inappropriate to just partially reclassify the two facilities with verified data.

d. Post-Survey Adjustments to Weights

As explained above and in more detail in ''Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination'' available in the public docket, we performed post-survey stratification (or post-stratification) and re-weighting to improve our extrapolation from the survey data to the 705 facilities, and to make the sample distribution more representative of the sampling population of 884 facilities and the universe of paint manufacturers. We did this by using the following steps:

(i) Post-stratify the ''small'' facility categories based on the ''number of employees'' data in the Dun and Bradstreet database.

(ii) Adjust statistical weights to compensate for the seven facilities that did not respond to the survey.

(iii) Collapse two sets of statistical weights resulting from the two rounds of sampling.

(iv) Examine the list of 705 facilities previously excluded from the sampling stratification, and include potentially in-scope paint manufacturers for the development of statistical weights for the paint universe.

We discuss these steps in more detail below.

Post-Stratify the ''Small'' Facility Categories Based on the ''Number of Employees'' Data in the Dun and Bradstreet Database

We reexamined the Dun and Bradstreet database used to assess whether the Agency mischaracterized some surveyed facilities. We found that the two facilities cited by the commenters (as miscategorized ''small'') had zero sales; one facility had 300 employees and the other facility had 125 employees in the Dun and Bradstreet database. Moreover, we found numerous zero sales figures in the database. Based on our analyses, many of these zero sales figures were aggregated and reported under a corporate or headquarters office such that sales volume figures for their multiple individual facilities showed zero. For instance, thirteen facilities with the same company name but different addresses and different facility identification numbers carried the same headquarters identification number; one of these facilities had a large sales volume while twelve had zero sales volume. We interpret this scenario as the headquarters reporting the aggregated sales volume under the headquarters address. For the other zero sales figures, we surmise they could be due to a variety of reasons: There were no sales in the reporting period, sales data were not released to Dun and Bradstreet; or there were reporting or entry errors in the database. All the facilities with zero sales in the sampling population were in the ''small'' categories (i.e., Small, non-TRI, SIC 2851–01; Small, non-TRI, SIC 2851–02; Small, TRI, SIC 2851–01; Small, TRI, SIC 2851–02), with the majority in the two ''Small, non-TRI'' strata. Based on this, we decided to use the ''number of employees'' data for post-stratification of the facilities originally classified in the ''Small, non-TRI'' categories since employee data in the database were essentially complete and would offer a reasonable measure of facility size (for more detail see ''Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination'' which is available in the docket for today's final determination).

On the other hand, we maintained the ''Large'' and ''Medium'' categories as originally stratified as there is no compelling reason to discount the sales volume data for those large and medium facilities.

Adjust Statistical Weights To Compensate for the Seven Facilities That Did Not Respond to the Survey

Out of the 299 facilities surveyed, seven facilities did not respond to the questionnaires. Using survey data from the respondents inevitably caused some bias, though insignificant in this case, in data extrapolation to the sampling population of 884 facilities (and in turn to the paint universe). That is, without accounting for the seven nonresponding facilities, the total waste generation might have been slightly underestimated. None of the commenters raised this issue. We, nevertheless, took this step to improve the statistical validity of our methodology. We adjusted the statistical weights to compensate for the nonresponse among the six surveyed facilities that we were able to contact. These were determined to be eligible for the survey because they were in business in 1998. (Eligibility only refers to whether the facility was in business and could respond to the survey, not whether the facility was a paint manufacturer.) This allows the respondents to represent the nonrespondents.

Collapse Two Sets of Statistical Weights Resulting From the Two Rounds of Sampling

As described in the listing background document available in the public docket for the proposed rule, the Agency conducted two rounds of sampling in February and March 2000. That is, we initially sent out questionnaires to 250 facilities, after which we discovered that only facilities located in States from Alabama through Ohio (alphabetically) were sampled. In order to correct this error, we sent out additional questionnaires to 49 facilities located in states after Ohio

[13] Cochran, W.G. 1977. Sampling Techniques, 3rd edition, John Wiley & Sons, New York, 428 pp.

(alphabetically), which were randomly selected using the same statistical methodology. This resulted in two sets of facilities with differing sampling weights. While using the two sets of weights for population extrapolation was statistically valid, we decided to collapse the ''through Ohio'' stratum with the ''after Ohio'' stratum to reduce sampling variances and unequal weighting effects. We believe that the alphabetical position of the states within strata bears no relationship to the survey outcomes, and thus collapsing the ''through Ohio'' stratum with the ''after Ohio'' stratum would not introduce bias. As demonstrated in the ''Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination'' available in the public docket, collapsing the two sets of weights reduced the variability in the sampling weights and improved the precision of the survey estimates.

Examine the List of 705 Facilities Previously Excluded From the Sampling Stratification, and Include Potentially In-Scope Paint Manufacturers for the Development of Statistical Weights for the Paint Universe

To address the comment that the Agency improperly assumed that the facilities in the sampling population of 884 facilities were representative of those in the group of 705 undefined facilities previously excluded from the sampling stratification, we reexamined the Dun and Bradstreet database to determine which of the 705 previously excluded facilities also could be in-scope paint manufacturers. We eliminated 45 duplicates and added the remaining 660 possible in-scope paint manufacturers to the sampling population of 884 to become the full list of 1,544 facilities (hereafter referred to as the full target population) potentially subject to the listing. We included these 660 possible in-scope facilities in our post-survey analyses, for comparison of the results based on the full target population with those based on the sampling population (i.e., assessing the impact of analysis with or without including the 660 facilities). However, we note that we still could not tell which and how many of these 660 facilities might be associated with the paint types of interest to this listing determination, and thus the uncertainty in the group of 705 undefined facilities persists and carries over to the full target population of 1,544 facilities.

Moreover, as discussed above, we could not distinguish the types of paint production for the group of 660 undefined facilities to classify them into architectural/special purpose and OEM categories. By the same token, after combining the 660 and 884 facilities into the full target population of 1,544 facilities, we could no longer stratify all the facilities into architectural/special purpose and OEM categories. Since paint type was not a relevant factor in our analyses (*i.e.,* from the survey we found no significant difference between the two types of paint production in terms of waste types and amounts generated, waste characteristics and constituents, and waste management practices), this did not affect the validity of the categorization.

Taking steps (i) to (iii), as outlined in IV.B.4.d, we developed post-strata and adjusted weights for the sampling population of 884 facilities. Likewise, taking steps (i) to (iv), as outlined in IV.B.4.d, we developed another set of post-strata and adjusted weights for the paint universe using the target population of 1,544 facilities.

As a result of the aforementioned post-stratification and re-weighting, the statistical weighting factors assigned to the surveyed facilities changed somewhat, as expected. Details about post-stratification and re-weighting, and the statistical techniques used, may be found in ''Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination'' available in the public docket.

e. Adjusted Statistical Analyses of RCRA Section 3007 Survey Data

We conducted three adjusted statistical analyses to derive the waste quantity distributions as inputs to the risk modeling, including:

—One bounding analysis, using the revised weights suggested by one commenter for the two facilities miscategorized as small, without making any other weight adjustments;
—One analysis using adjusted weights for the sampling population of 884 facilities per post-survey adjustment and re-weighting (but not the two revised weights suggested by the commenter); and
—One analysis using adjusted weights for the entire paint universe per post-survey adjustment and re-weighting (but not the two revised weights suggested by the commenter).

To assess the impact of changing weights for the two facilities mischaracterized as small, we initially conducted a bounding analysis using the revised weights (one changed from 4.0476 to 1, and the other from 7.6154 to 1) suggested by one commenter. We note that these two facilities generated relatively higher quantities of nonhazardous waste solids among the various quantities modeled for the landfill disposal scenario. Changing their statistical weights would affect the waste quantity distributions and could conceivably result in somewhat different risk assessment results. As we noted above, we consider simply changing these two weights to be statistically incorrect. Nevertheless, we conducted this bounding analysis for two key target constituents, acrylamide and antimony. The results indicate that the changes made to the waste quantity distributions do not appear to have a significant impact on the proposed listing levels for waste solids, i.e., making these changes would increase the listing levels by about a factor of 1.7 for the two constituents (see Table IV.B–3).

Using the corrected waste solid quantity (as discussed above in section IV.B.2), as well as the adjusted statistical weights for both the sampling population of 884 and the full target population of 1,544 facilities, resulted in a modified distribution of nonhazardous waste solids going to nonhazardous landfills. We note that adjusting the weights did not change the distribution significantly. Specifically, the percentile [14] quantities from the resulting waste quantity distributions, which generally represent the characteristics of the paint universe's nonhazardous waste solids that are landfilled, essentially remain as originally estimated with slight variations. We realize that there is a greater degree of uncertainty in the adjusted weights and statistical analysis for the full target population of 1,544 facilities than the sampling population of 884 facilities, because it is likely that more of the 660 (out of 705) facilities are producing products outside the scope of the rulemaking. Therefore, we maintain our conclusion that the waste quantity distributions (whether adjusted or not) for the sampling population of 884 facilities should be more representative of the paint universe than those for the full target population of 1,544 facilities. As such, we performed an adjusted statistical analysis of nonhazardous waste solids going to nonhazardous landfills for the sampling population of 884 facilities. Nonetheless, we also performed a similar adjusted statistical analysis for the full target population of 1,544 facilities for comparison. The final

[14] A percentile of a distribution represents a value below which a specified percentage of the data lie. For example, the 50th percentile is the value that 50% of the data lie below.

results revealed that neither of these two adjusted statistical analyses would significantly impact the risk assessment results.

Results of the final risk assessment using revised/adjusted statistical weights in conjunction with a correction to the shower model inhalation exposure for non-carcinogens (addressed in section IV.B.4) are summarized in Table IV.B–3. For details, see ''Addendum to the Risk Assessment Technical Background Document for the Paint and Coatings Hazardous Waste Listing Determination'' available in the public docket.

TABLE IV.B–3—RISK CONCENTRATION LEVELS FOR COMBINED WASTE SOLIDS (MG/KG) [1]

Constituent of concern	Original level from proposal (*indicates correction for shower model error)	Level resulting from bounding analysis [2]	Level resulting from adjusted weights—population of 884 facilities	Level resulting from adjusted weights—Population of 1,544 facilities
Acrylamide	470	810	370	250
Acrylonitrile	*[440]	[3] Not analyzed	340	220
Antimony	3,200	5,300	2,600	1,700

[1] Revised results from adjusted weights also reflect the corrections for error in the shower model.
[2] Moving two misclassified facilities per comments.
[3] It was already known that an error in the shower model would increase this level.

In summary, considering the uncertainties involved, the originally designed stratified sampling scheme was statistically valid and thus did not mischaracterize the paint universe. However, we agree with the commenters that the two facilities miscategorized as ''small'' due to incorrect sales volume information in the database should have been placed in other categories. Since accurate sales data could not be obtained for some other surveyed facilities that may be similarly mischaracterized in the same database, we did not partially reclassify the strata of those two miscategorized facilities because that would violate the underlying probability structure of the survey. This mischaracterization resulted in a greater degree of uncertainty in extrapolation from the survey data and estimation of waste quantities due to higher variability in the ''small'' facility categories than we thought. Nevertheless, we performed post-survey adjustments to the statistical weights in an attempt to improve data extrapolation, particularly post-stratification of ''small'' facility categories and incorporation of the 660 possible in-scope facilities resulting from the examination of the 705 previously excluded facilities. While the overall adjustments improved data extrapolation and waste quantity estimates, incorporation of the 660 facilities (into the 884 original sampling population to become a target population of 1,544 facilities) contributed to additional uncertainty in the adjusted weights because it is likely that more of the 660 facilities are out of the scope of the listing than in the original sampling population of 884 facilities. We, therefore, maintain our conclusion that the waste quantity distributions for the sampling population of 884 facilities are more representative of the paint universe than those for the full target population of 1,544 facilities. Using the adjusted weights for the sampling population of 884 facilities and the corrected waste solid quantity in response to comments, the final risk assessment for combined waste solids resulted in decreased risk concentration levels for three constituents of concern by about a factor of 1.3. Even at these lower levels, we do not believe listing paint waste solids is warranted; see detailed discussions in sections IV.B.5 and IV.B.6 below.

5. Concentration Levels for the Key Constituents of Concern and the Likelihood That They Occur in Wastes

As noted above, correcting for an error in the modeling causes two of the five constituents of concern (methyl isobutyl ketone and methyl methacrylate) to drop from further consideration, because the projected risk-based waste concentrations indicate these chemicals would not present risks of concern in paint waste solids. Three potential constituents of concern remained: acrylamide, acrylonitrile, and antimony. We carefully considered the comments submitted and all the information available to us on the potential for these constituents to be present in paint waste solids at levels of concern. We conclude that the available information does not indicate that any of these constituents provide a sufficient basis for listing paint waste solids. Below we describe the key information we used to reach a final listing determination. We discuss the organic monomers acrylamide and acrylonitrile together because the issues for the two organic chemicals are closely related and somewhat different from the issues for antimony.

Acrylamide and Acrylonitrile

We proposed listing levels for acrylamide and acrylonitrile based on the limited data we collected in our survey of generators and other information indicating that polymers derived from acrylamide and acrylonitrile are used in paint manufacturing. Acrylamide and acrylonitrile are monomers, *i.e.,* low molecular weight chemicals that serve as building blocks to form larger molecular weight polymers that are used as binders in paints. We were concerned about the unreacted monomers in the binders, not the polymers, due to the known toxicity of the monomer forms.

Information provided by facilities in the 3007 Survey indicated that some manufacturers reported the presence of acrylamide or acrylonitrile derived polymers in wastes. However, the survey showed that these chemicals were reported relatively infrequently. Out of the 151 facilities that reported generating paint manufacturing wastes, three reported acrylamide polymers in paint waste solids (off specification paint or sludges); all such wastes were sent to incinerators. Six facilities reported acrylonitrile polymers in paint waste solids (off specification paint and sludges); for these six facilities, two reported sending their wastes to landfills, while the remainder sent their wastes to incinerators. The 3007 survey did not provide any useful data for monomer levels in these wastes for two reasons. First, submission of concentration information was voluntary, and second, the survey required facilities to note the presence of these constituents as the monomer and associated polymer (e.g., acrylamide and acrylamide derived polymers) under one combined category. Thus, we

believe that the limited information on constituent concentrations only provides information on the prevalence of the associated polymer forms, and does not provide any useful information on monomer levels.

We discussed the potential levels of acrylonitrile in paint binders and paint products in the proposed rule (see 66 FR10106–10107). This discussion was related to the possible levels of acrylonitrile in liquid paint wastes. However, this approach leads to an estimate of monomer levels in paint products, which is useful for an examination of monomer levels in waste solids. For the proposal, we cited a reference that estimated a likely concentration of acrylonitrile in paint of approximately 30–50 ppm. This was based on a maximum concentration of 100 ppm acrylonitrile in the polymer binder, and a fraction of binder in paint formulations of 30–50%.[15] To estimate a possible upper bound, we also used Material Safety Data Sheets (MSDS) for acrylic paint binders, which indicated that acrylonitrile was present in trace amounts. The sheets did not report acrylonitrile levels, but showed levels of <500 ppm and <1000 ppm for the monomers from all the acrylic polymer sources in the binders. Thus, assuming a paint formulation would contain up to 50% binder, we calculated an upper bound of about 500 ppm acrylonitrile in paint.

The same reference we cited in the proposal for acrylonitrile also estimated a likely concentration range for acrylamide in paint binders.[16] The reference noted that acrylamide is less widely used than acrylonitrile monomer in paint formulations. With very limited data, the reference estimated <5 ppm acrylamide monomer in paint, based on a maximum binder concentration of approximately 20 ppm, and assuming the acrylamide containing polymer makes up to 25 wt.% of the formulation.

We received nine comments from industry and industry associations on the proposed constituents of concern and their concentration levels. All of the commenters raised the point that the constituents of concern would not be found in paint production wastes at the levels of concern. Commenters disputed our estimates for monomer levels, and stated that we overestimated the concentrations of acrylonitrile and acrylamide monomers likely to be in paint wastes. They noted that our survey combined monomer and associated polymers into one constituent category, so that when facilities noted the presence of the polymer (e.g., acrylamide derived polymers) in wastes, we incorrectly inferred that there are substantial monomer (e.g., acrylamide) residuals. They did not agree with our use of data from MSDS documents, pointing out that the <0.1% (1000 ppm) residual level specified on the MSDS is based on the Occupational Safety and Health Administration (OSHA) Hazard Communication standard that requires listing individual carcinogenic constituents if they are present at greater than 0.1% (see 29 CFR 1910.1200(g)(2)(I)(C)). The commenters said that the MSDS merely indicates that the residual levels for any of the monomers present are less than the 1000 ppm to comply with the standard. The commenters stated that the manufacturer listed ''trace'' levels of acrylonitrile on the MSDS to comply with other reporting requirements (e.g., California Proposition 65).

Commenters submitted information to support their contention that we overestimated possible monomer concentrations in paint wastes. One commenter submitted documentation on acrylonitrile levels from the same binder manufacturer that was the source of the MSDS documents we cited in the proposal. This documentation showed that acrylonitrile levels in binders are controlled to 10 ppm or less, which is well below the level of 1000 ppm we assumed. In addition, a polymer trade association submitted the results of a confidential survey that showed its members reported maximums of 10 to 25 ppm for acrylonitrile in paint binders.

Commenters stated that acrylamide polymers are rarely used in paint binders. A polymer trade association survey of its members found one limited instance of an acrylamide polymer sold as a binder for use in paint formulations; this manufacturer reported a maximum acrylamide level of 25 ppm and that the product typically contains lower residual levels. Commenters indicated that, while acrylamide may also be used in cross linking other polymer binders, it has limited capacity for this unless first reacted with formaldehyde. This forms N-methylolacrylamide (NMA), which is less toxic.

In response to these comments, we gathered additional information on the potential levels of acrylonitrile and acrylamide monomers in paint binders. We found one other MSDS that listed the presence of acrylonitrile in a paint binder. The information was similar to what we found in the MSDS information for the proposal, i.e., the MSDS listed <0.05% (500 ppm) for all acrylic monomers present, and indicated the presence of a ''trace'' of acrylonitrile. Even assuming all of the monomer in the binder was acrylonitrile, the fraction of binder used in the paint product at issue (25%) would yield an upper bound of <125 ppm acrylonitrile. We also found one other reference to acrylonitrile levels of 50 to 90 ppm in acrylonitrile-butadiene copolymer emulsions; however, we could not determine if the polymer was used in paint formulations.[17]

We were able to find one MSDS that listed the presence of acrylamide in a paint binder (styrene-butadiene latex). This listed a level of <50 ppm acrylamide, and indicated that the level of the formaldehyde-derived form of acrylamide (NMA) was <100 ppm. Thus, it appears that NMA was used as a cross-linking agent and that residual acrylamide may arise from this use.[18] The MSDS indicated that the fraction of binder used in the paint product was 26%, which means that the level of acrylamide in the paint would be <13 ppm.

After reviewing information from the proposal, evaluating the information provided in comments from industry, and considering the information on paint binders, we conclude that the concentrations of these monomers in waste are not likely to approach the listing levels. For acrylonitrile, our original estimate of up to 30–50 ppm of acrylonitrile in paint formulations is similar to information from industry and the limited data from MSDS documents. Similarly, the limited data we have indicate that the levels of acrylamide are not likely to approach the listing level. We agree with commenters that the use of acrylamide in binders appears to be relatively rare.

Because the OSHA reporting for MSDS's only requires listing acrylamide or acrylonitrile if they are present at or above 1000 ppm, we cannot absolutely rule out that they might be present at levels approaching 1000 ppm in some binders. If we were to assume that acrylamide or acrylonitrile levels to be <1000 ppm in paint binders, and if the binder comprised 25% to 50% of a paint formulation, then the upper bound for

[15] See the docket for the memo from Paul Denault, Dynamac Corporation, to David Carver and Cate Jenkins, EPA, dated September 6, 2000.

[16] ibid.

[17] Barristel E., Bernardi A., Maestri P., Enzymatic decontamination of aqueous polymer emulsions containing acrylonitrile. Biotechnology Letters, 19, 131–134 (1997).

[18] The MSDS also noted the total residual monomer content was < 0.5% (5000 ppm). This indicates that the acrylamide (less than 50 ppm) makes up very little of the ''residual monomers'' in this product.

paint would be from <250 to <500 ppm. These concentrations would be in the range of the revised listing levels (e.g., the acrylamide and acrylonitrile levels are 370 and 340 ppm respectively for the revised results for the universe of 884 facilities in Table IV.B–3). However, we have no indication that such levels are realistic for paint formulations, nor do we have any information suggesting that paint manufacturing wastes would ever reach these levels. Furthermore, in the case of acrylamide, we found only three facilities that reported the presence of the polymer in their waste solids; all of which was sent to incineration. Similarly, only six facilities reported acrylonitrile polymer in waste solids. Therefore, the low prevalence of acrylamide and acrylonitrile polymers in paint waste solids also indicates that these chemicals are unlikely to present a significant risk in these wastes.

We agree with commenters that our use of the 1000 ppm concentration of monomers in paint binders from the MSDS represents an implausible case; this assumed that all of the residual monomer would be the monomer of concern, and that the constituent would be present at the upper bound level (assumptions for which we have no factual support and are implausible based on the information in the record). These assumptions were appropriate for the purpose of estimating an upper bound for acrylonitrile levels in paint liquid wastes to illustrate that this constituent was highly unlikely to present risks in liquid wastes that are managed in tanks. However, based on the information provided by commenters and our supplemental investigations performed in response to those comments, we do not believe that the levels of these two constituents are likely to approach 1000 ppm. The information in our possession indicates that the highest expected concentrations are likely to be less than 50 to 100 ppm in paint binders, which would lead to levels in paint and associated wastes (<25 to <50 ppm) that are well below the levels of concern. We would be speculating without information or technical support to assume higher levels in the waste. Therefore, we have decided that neither acrylamide nor acrylonitrile warrant inclusion as constituents of concern for listing waste solids from paint manufacturing.

Antimony

We proposed listing levels for antimony based on the data we collected in our survey of generators and other information indicating that antimony compounds are used in paint manufacturing. The raw materials data base we developed for the proposal (66 FR 10084) shows that several forms of antimony are potentially used in paints, most notable being the use of antimony oxide as a flame retardant and/or pigment. Furthermore, the responses to our 3007 Survey indicated that a total of 11 facilities reported the presence of antimony in some waste (hazardous, nonhazardous, solid, liquid). Four facilities reported generating nonhazardous waste solids that contained antimony.

We received four comments, three from trade associations and one from an industry facility, that stated that antimony should not be considered a constituent of concern. Commenters stated that the only color pigments which incorporate antimony are complex inorganic color pigments. One commenter provided references showing that the most common antimony-derived pigments (chrome antimony titanate and nickel antimony titanate) contain an extremely stable and insoluble form of antimony in a calcined matrix with titanium dioxide, which does not present risks. Other commenters indicated that antimony oxide is used in paints as a pigment, but argued that antimony pigments are used in small amounts and make up a small fraction (<1%) of pigments used.

In response to these comments, we reexamined the data we had for antimony in paint wastes from our 3007 Survey. Eight of the 11 facilities that reported antimony in their wastes provided estimates of antimony levels. Generally, these levels were below levels of concern and were usually presented as ''less than'' values. We closely examined the information for the four facilities that reported the presence of antimony in nonhazardous waste solids. Two provided estimates of antimony levels in the survey: one generator reported very low levels (<0.031%), and one reported potentially significant levels (1% in sludges). However, when we called to confirm the 1% value, this facility revised its estimate for sludges to 0.1% (1000 ppm). The facility contact indicated that they do not use antimony compounds in their products, and suggested that any antimony would be due to trace levels present in the titanium dioxide used in paint formulations. The facility provided information from its supplier for titanium dioxide that indicated levels of antimony were low (<10 ppm). Thus, we consider the facility's revised estimate as a conservative estimate of potential antimony levels.

We contacted the other two facilities that reported the presence of antimony in waste solids, but did not report antimony concentrations, to obtain information on the potential source and level of antimony. One facility reported only *one* ingredient out of hundreds used that contained antimony in a pigment. The company indicated that in the year 2000 it used a total of 50 lbs. of the pigment, which contained about 0.8 lbs. of antimony. Therefore, wastes from this facility are unlikely to contain antimony at levels of concern.[19] The other facility is the only one from the survey that indicated it uses antimony as a flame retardant component. This company produced a small volume of coating products with antimony levels of 1 to 2%. The facility said that these products account for less than 0.6% of coating products manufactured annually, and indicated any levels in waste solids would be ''minute.''

Based on data from our materials data base, as well as MSDS documents we obtained, we recognize that some fire-retardant coatings may contain relatively high levels of antimony compounds (from 1.8 to <8%). Therefore, we contacted an additional 5 facilities from the Dun and Bradstreet data base, which were not included in the survey, that appeared to be manufacturing flame-retardant paints or coatings. In all cases, the facilities indicated that the industry was moving away from antimony-based fire-retardant coatings and toward organic-based products. One of the 5 facilities indicated it still used antimony oxide in some products at levels of 0.5 to 1%. However, this facility said it does not generate waste solids, but only wash water, which is sent offsite for treatment.

As noted by the commenters, there is some limited use of antimony compounds in paint pigments. In addition to use of antimony titanate compounds noted above, we also found MSDS data showing some use of antimony oxide in lead chromate paints at levels of 1 to 2%. However, we do not believe that the use of antimony in lead chromate paints would present significant risks, because we expect that facilities already handle wastes from such paints as hazardous waste under the RCRA TC regulations (40 CFR 261.24) due to the high levels of chromium and lead (26 to 57% lead chromate) in these products.[20]

[19] Using this facility's reported volume of paint manufacturing waste solids in 1998 (43,266 gallons or 394,245 kg), even assuming all the antimony was passed through to the wastes would yield <0.0001% antimony on an annual basis.

[20] The TC threshold for leachable lead, for example, is 5 mg/L or 5 ppm. We found in the 3007

Continued

In summary, after considering the available information on antimony use and the potential for waste to contain this constituent, we do not now believe that the information in hand supports a listing for this constituent. While antimony has some use in paint formulations, we did not find any waste from the surveyed facilities that contained antimony at levels that would approach the listing level. The most likely wastes to have high levels of antimony would be from the production of fire-retardant paints, e.g., off specification products could contain 1 to 2% antimony. However, manufacturers are moving away from antimony to organic-based fire-retardants, and we found very few facilities that reported using antimony in such formulations. Therefore, a listing based on antimony would only be addressing potential wastes from the production of a small proportion of highly specialized products (e.g., fire-retardant paints). The one facility we found that generates waste solids that may originate from flame retardant coatings containing antimony (1–2%) confirmed that these products account for less than 0.6% of its production line. Products with high antimony levels appear to be a small fraction of paints and coatings produced, and even the facilities that use antimony appear unlikely to generate waste with significant levels on an annual basis. We believe such antimony wastes, even if they exist, would be generated infrequently and would not pose significant risks.

6. Conclusion for Paint Production Waste Solids

We are making a final determination not to list waste solids from paint manufacturing. As noted in Section II of today's notice, we applied the factors under 261.11(a)(3) in making this listing determination. Most of these factors are incorporated into our risk assessment methodology (factors (i) through (viii) , including constituent toxicity, constituent concentration, constituent fate and transport, and waste volumes).[21] In this regard, we revised our risk assessment to incorporate adjusted waste volume estimates and also to correct for an error in the modeling. We believe our original sampling scheme is statistically valid; the revised analyses show that different approaches to estimating waste volumes do not significantly alter the results (see Table IV.B–3). Correcting for an error in the modeling causes two constituents to drop from further consideration (methyl methacrylate and methyl isobutyl ketone).

A critical factor in this listing determination is the concentrations of the constituents of concern in the waste (factor (viii)). After considering information from the proposal, the comments on the proposed rule, and other sources (e.g., MSDS documents), we do not believe the concentrations of acrylamide and acrylonitrile in paint wastes approach the revised listing levels. Similarly, after considering the available information on antimony use and the potential for waste to contain this constituent, we do not believe we have a sound basis to list this waste for this constituent. We did not find any surveyed facility that generated wastes with antimony concentrations that would approach the listing level. While antimony has some use in paint formulations, paint manufacturers are moving away from uses of most potential concern (e.g., in fire-retardant paints). We also conclude that products with high antimony levels are a small fraction of paints produced, and even the facilities that use antimony are unlikely to generate wastes that present risks of concern.

Finally, we considered the impact of other regulatory programs on the potential management scenarios and the associated risks (factor (x)). As explained previously, we find that the existing RCRA regulations for wastes limit potential risks that may arise from the use of antimony in paints containing pigments such as lead chromate. Therefore, after considering these factors, we conclude that the available information for these constituents indicates that listing paint waste solids is not warranted.

V. Analytical and Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—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;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Today's final determination was submitted to OMB for review. Pursuant to the terms of the Executive Order, the Agency, in conjunction with OMB, has determined that today's final determination on paint production wastes was significant because of novel policy issues. Changes made in response to OMB suggestions or recommendations are documented in the public record.

The aggregate annualized social costs for this final rule are generally equivalent to baseline costs. Furthermore, this rule is not expected to 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. The benefits to human health and the environment resulting from today's final determination are equivalent to baseline benefits. In short, today's final determination imposes no costs to industry and government and provides no benefits to human health and the environment.

B. What Economic and Equity Analyses Were Completed in Support of the Proposed Listing for Paint Production Wastes?

We prepared an Economic Assessment[22] in support of the February 13, 2001 proposed rule. We found that the proposal would have resulted in incremental compliance costs to selected paint and coatings manufacturers who were subject to rule's requirements. In most cases, these manufacturers would have experienced incremental costs related to both RCRA administrative and Land Disposal

Survey that facilities coded paint manufacturing waste solids as TC hazardous (D008) when wastes contained levels of 0.02 to 3% lead, well below the levels found in lead chromate paints.

[21] Note that we also considered whether any damage cases arose from the mismanagement of paint manufacturing wastes (factor (ix)). We determined that the available data did not provide useful information for a listing determination (see 66 FR 10082–10083).

[22] U.S. EPA, Office of Solid Waste, Economic Assessment for the Proposed Concentration-Based Listing of Wastewaters and Non-wastewaters from the Production of Paints and Coatings—Final Report, January 19, 2001.

Restriction (LDR) requirements. We also found that there may have been minor cost impacts to Subtitle D landfill operators, if they would have needed to install tanks and/or piping systems in order to take advantage of the proposed temporary deferral under the Clean Water Act. Furthermore, because paint and coatings are so widely used throughout all sectors of the U.S. economy, any direct cost impacts to this industry would likely have rippled throughout the economy in the form of marginally higher prices or product alterations to users of the affected products. The extent of any price modification would have depended upon marketing decisions by individual producers, the availability of direct substitutes, and the regional price elasticity of demand for the products of concern.

Paint and coatings manufacturers are listed under the Standard Identification Classification (SIC) as industry 2851. The North American Industrial Classification System (NAICS) code for Paint and Coatings is 325510. Based on our RCRA 3007 industry survey, we estimated that, at the time of the proposal, there were 972 operational paint and coatings manufacturing facilities in the U.S. (See 66 FR 10072). Census data indicated that total product shipments ranged from 1.2 and 1.5 billion gallons per year between 1992 and 1998, with total 1998 product value estimated at $17.2 billion.

For the proposed concentration-based approach, we estimated aggregate nationwide compliance cost impacts at $7.3 million per year. Waste management costs were found to represent 81.3 percent of this total, followed by RCRA administration costs at 9.3 percent. Analytical and hazardous waste transport costs were found to each represent about 4.7 percent of the total annual cost. The first scenario under this proposed approach assumed that the newly listed wastes currently going to hazardous waste fuel blending or directly to hazardous waste burning cement kilns would be diverted to commercial incineration at a higher cost. Although this is not likely to occur, it was considered here as a sensitivity scenario. Under this scenario, total nationwide costs increased to $18.1 million per year. The second scenario examined total costs for listing only paint production waste solids. The total costs under this scenario were estimated at $6.7 million per year. This scenario may more closely approach actual costs should generators divert all liquid wastes to exclusive management in tanks and discharge to a POTW, or under a NPDES permit. Total incremental compliance costs under the traditional or non-concentration-based option were estimated at $10.9 million per year. Under this option, 100 percent of the targeted waste would have become hazardous. At time of the proposal, we examined the no-list option as one alternative to the Agency's proposed approach. Costs under the no-list option were found to be zero, except perhaps for the negligible costs associated with reading of the final rule for informational purposes.

We were not able to monetize the change in net welfare potentially resulting from the proposed rule. However, we were able to qualitatively describe those who were likely to have been negatively and positively impacted by the rule, as proposed. Positively impacted groups may have included the following: paint manufacturers who would not have been affected by the rule, hazardous waste management facilities and transporters, and population groups surrounding paint manufacturing facilities. Negatively impacted groups may have included paint manufacturers who would have been subject to rule requirements, paint consumers who may be impacted by increased prices, and municipal landfills had they needed to install new tanks or piping systems.

We also examined all relevant Acts and Executive Orders in our assessment of impacts potentially associated with the February 13, 2001 proposed action. These included the following: Executive Order 13045—Children's Health, Executive Order 12898—Environmental Justice, Executive Order 13132—Federalism, Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, Unfunded Mandates Reform Act. Overall, we found that the rule, as proposed, was not subject to these Orders and/or Acts due to the economic threshold or, no impacts were identified, or both.

The January 19, 2001 Economic Assessment provides detailed information on the analytical methodology, data, and limitations associated with our cost analysis. This document also presents a detailed review of how we analyzed each relevant Executive Order and Act. This document is available in the docket established for the proposed action.

In addition to the Economic Assessment, we conducted a Regulatory Flexibility Screening Analysis (RFSA) in support of the February 13, 2001 proposed rule. This analysis, entitled: Regulatory Flexibility Screening Analysis for the Proposed Concentration-Based Listing of Wastewaters and Non-wastewaters from the Production of Paints and Coatings, January 19, 2001, was prepared in response to requirements established under to Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et.seq*. Findings from this analysis indicated that the rule, as proposed, would not have resulted in significant economic impacts on a substantial number of small business paint manufacturers potentially subject to the rule's requirements. The RFSA document is available in the docket established for the proposed action.

C. What Substantive Comments Were Received on the Cost/Economic Aspects of the Proposed Listing for Paint Production Wastes?

We received 44 comments in total, including two comments received after the close of the comment period. Of the total 44 comments, 20 included some reference to the Economic Assessment, Regulatory Flexibility Screening Analysis (RFSA), and/or cost and economic issues in general. Fifteen of these comments were from industry and five were from trade associations. The comments can be consolidated into nine substantive issues. These are: (1) Expansion of 40 CFR part 261—appendix VIII, (2) addition of chemicals as UHCs, (3) addition of chemicals to F039, (4) analytical issues, (5) cost impacts on remediation wastes, (6) potential for indirect cost impacts occurring to raw material suppliers, (7) implementation concerns, (8) scope concerns, and, (9) baseline requirements may impact the need for a final rule.

As described in section IV, our final determination not to list any of the targeted paint production wastes was based on considerations other than cost/economic issues presented by commenters. Therefore, none of the public comments on the above substantive economic issues, or any specific economic comment, impacted our final no-list determination. As such, we have not prepared specific responses to these comments. However, we recognize and acknowledge the key economic issues and concerns raised by commenters. These issues are summarized in our response-to-comments document. This document, entitled: Public Comment Summary and Response Document addressing Economic Issues Associated With the Proposed Listing for Paint Production Wastes, in support of the Paint Production Wastes Final Determination, is available in the docket established for today's final determination.

D. What Are the Potential Costs and Benefits of Today's Final Determination?

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. All other factors being equal, a rule that generates positive net welfare would be advantageous to society, while a rule that results in negative net welfare to society should be avoided.

Today's final determination is expected to generally impose no costs on industry. Thus, aside from the negligible burden of reading and understanding the relevant section of the **Federal Register**, the incremental burden to industry is expected to be zero. Benefits to human health and the environment potentially associated with today's final determination will generally be equivalent to baseline conditions.

E. What Consideration Was Given to Small Entities Under the 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 Procedures 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 determination on small entities, a small entity is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each NAICS code by the Small Business Administration (SBA).

The Agency has examined the potential effects today's final determination may have on small entities, as required by the RFA/SBREFA. We have determined that this action will not have a significant economic impact on a substantial number of small entities. This is evidenced by the fact that today's no-list action will result in zero to negligible incremental cost impacts. The only potential impact associated with this action may be the burden associated with reading and understanding the final determination. After considering the economic impacts of today's final determination on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Was the Unfunded Mandates Reform Act Considered in This Final Determination?

Executive Order 12875, ''Enhancing the Intergovernmental Partnership'' (October 26, 1993), called on federal agencies to provide a statement supporting the need to issue any regulation containing an unfunded federal mandate and describing prior consultation with representatives of affected state, local, and tribal governments. Signed into law on March 22, 1995, the Unfunded Mandates Reform Act (UMRA) supersedes Executive Order 12875, reiterating the previously established directives while also imposing additional requirements for federal agencies issuing any regulation containing an unfunded mandate.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, the Agency must develop a small government agency plan, as required under section 203 of UMRA. This plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final determination is not subject to the requirements of sections 202 and 205 of UMRA. Today's final determination will not result in $100 million or more in incremental expenditures. The aggregate annualized incremental social costs for today's final determination are projected to be near zero. Furthermore, today's final determination is not subject to the requirements of section 203 of UMRA. Section 203 requires agencies to develop a small government Agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. We have determined that this final determination will not significantly or uniquely affect small governments.

G. Were Equity Issues and Children's Health Considered in This Final Determination?

By applicable executive order, we are required to consider the impacts of today's rule with regard to environmental justice and children's health.

1. Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks''

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's final determination is not subject to the Executive Order because it is not economically significant, as defined in Executive Order 12866.

2. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health

conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). We have no data indicating that today's final determination would result in disproportionately negative impacts on minority or low income communities.

H. What Consideration Was Given to Tribal Governments?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's final determination does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's final determination will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

I. Were Federalism Implications Considered in Today's Final Determination?

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.''

Today's final determination 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 the Order. Thus, Executive Order 13132 does not apply to this final determination.

J. Were Energy Impacts Considered?

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final determination is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

VI. Paperwork Reduction Act

This final determination does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because there are no paperwork requirements as part of this final determination, we are not required to prepare an Information Collection Request (ICR) in support of today's action.

VII. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final determination does not involve technical standards; thus, the requirements of section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

VIII. The Congressional Review Act (5 U.S.C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

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 submitted a report containing this determination, 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 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).

Dated: March 28, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–8153 Filed 4–3–02; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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/plawcurr.html*.

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H.R. 2356/P.L. 107–155

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