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Presidential Documents

Title 3—

The President

Proclamation 7572 of June 7, 2002

Great Outdoors Week, 2002

By the President of the United States of America

A Proclamation

During Great Outdoors Week, our Nation celebrates the wonderful legacy of our parks, forests, wildlife refuges, recreation areas, and other public lands and waters. Protection of many of these special places started with initiatives begun by President Theodore Roosevelt. He established a commitment to conservation that we continue today. President Roosevelt believed that, ''The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased; and not impaired in value.'' As we enjoy the many benefits of our great outdoors, we also must renew our individual and collective dedication to natural resource conservation.

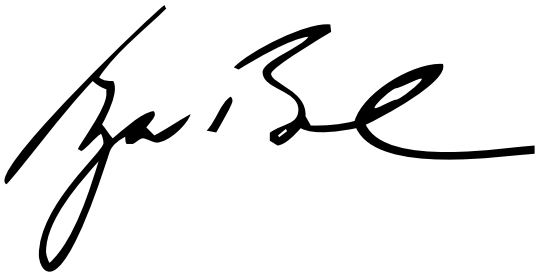
Across our Nation, federally managed lands comprise nearly one out of every three acres. Thousands of recreation sites nationwide are managed by Federal agencies. These agencies work to make it easier for all people to enjoy our natural resources. ''Recreation One-Stop'' provides information on the Internet to help Americans find and experience the land we love. In addition, through increases in appropriations, fees paid by visitors, and partnerships with non-profits, communities, and businesses, we are addressing and reversing years of neglect.

Americans have a special appreciation for the great outdoors. Each year, thousands of hard-working volunteers contribute millions of hours to our parks and other sites. They build trails, act as campground hosts, staff visitor centers, serve as interpreters, clean shorelines, and introduce children to safe and healthful outdoor fun. Their efforts enhance the enjoyment of those who visit our parks each year. My call to service through the USA Freedom Corps will help energize volunteerism on these Federal lands. In addition, my Administration's new Cooperative Conservation Initiative will provide millions of dollars to help citizens undertake conservation projects on public lands.

The events of September 11 have reminded us of our deep and abiding love for our homeland. And our natural, historic, and cultural sites have played an important role since that tragic day, serving as places for many Americans to reflect upon life and renew their hope. During Great Outdoors Week, I encourage all Americans to experience and celebrate our wonderful natural heritage.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 9 through June 15, 2002, as Great Outdoors Week. I call on all Americans to observe this week with safe and wholesome outdoor recreational activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Proclamation 7573 of June 7, 2002

Flag Day and National Flag Week, 2002

By the President of the United States of America

A Proclamation

The American flag is a beacon of hope, a symbol of enduring freedom, and an emblem of unity. Many have given their lives in its defense, and countless men and women have worked to ensure that Old Glory continues to stand for the ideals of freedom, justice, and equal opportunity for all. Our flag symbolizes the purpose and resolve of our Nation, first expressed by our Founders who triumphed against great odds to establish this country.

Today, as we face the challenges of a new era, our flag reminds us that freedom will prevail over oppression and that good will overcome evil. Following the attacks of September 11, Americans embraced a renewed sense of the meaning and purpose of our flag. The unforgettable images of our Nation's colors flying defiantly over the debris of the World Trade Center inspired our country with a healing hope, uniting our people in purpose and consoling those who had suffered great loss. At the Pentagon, an American flag was hung from the building's damaged walls, expressing our collective resolve to rebuild and move forward. And earlier this year, during the Opening Ceremonies of the Winter Olympic Games in Salt Lake City, Americans, joined by peace-loving people from around the world, paid tribute to the tattered flag that had been recovered from the ruins of the World Trade Center.

As we reflect on what our flag represents, we recall the words of President Woodrow Wilson, who said just weeks before the onset of World War I: ''My dream is that, as the years go on and the world knows more and more of America, it . . . will turn to America for those moral inspirations which lie at the basis of all freedom . . . that America will come into the full light of the day when all shall know that she puts human rights above all other rights, and that her flag is the flag, not only of America, but of humanity.''

The flag that inspired Francis Scott Key to write our National Anthem 188 years ago still energizes and inspires the American spirit. Since September 11, we have seen our Nation's flag appear everywhere—on cars and clothing, houses and hard hats—showing our country's commitment to always remember those who lost their lives and to remain unremitting in the pursuit of justice.

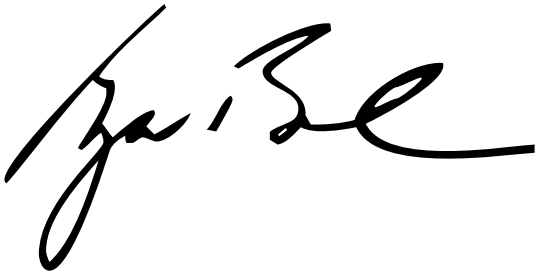
Today, in Afghanistan and around the world, brave men and women are serving under our flag, fighting to preserve freedom and win the war against terrorism. All Americans are profoundly grateful for their service and their sacrifice. We also recognize and commend the contributions of our veterans who have bravely defended our Nation's founding principles throughout our history. The image of six marines raising the flag on the top of Mount Suribachi at Iwo Jima will always remind us that the struggle for liberty is a story of courage, sacrifice, and commitment to the unshakeable belief in freedom's promise.

On Flag Day, we remember the struggles and successes for which our flag stands. And we look to the flag as an everlasting symbol of our commitment to a world of peace, a Nation of principle, and a people of unity.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President annually issue a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 14, 2002, as Flag Day and the week beginning June 9, 2002, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–51–AD; Amendment 39–12780; AD 2002–12–08]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc. (formerly AlliedSignal Inc., and Textron Lycoming) ALF502 and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International, Inc. (formerly AlliedSignal Inc., and Textron Lycoming) ALF502 and LF507 series turbofan engines. This amendment requires removal from service of certain gas producer turbine (GPT) components prior to reaching new, lower cyclic life limits using drawdown plans and replacing with serviceable parts. This amendment is prompted by continuous analysis of field-returned hardware indicating smaller service life margins than originally expected. The actions specified by this AD are intended to prevent GPT component failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 17, 2002.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International, Inc. (formerly AlliedSignal Inc., and Textron Lycoming) ALF502 and LF507 series turbofan engines was published in the **Federal Register** on August 23, 2001 (66 FR 44316). That action proposed to require removal from service of certain GPT components prior to reaching new, lower cyclic life limits using drawdown plans, and replacing with serviceable parts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. However, since the proposal was published, the FAA has identified the need for a few corrections and clarifications.

Eliminate Redundant Part Numbers (P/N's)

Because the title of Table 3 lists those turbine spacer P/N's affected, the spacer P/N's in item 2 of the table are redundant and have been deleted.

Engine Model Inadvertantly Listed

Item 3 of Table 3, which is engine model ALF502R–3, has been identified as not having on its build list, spacer P/N 2–121–071–36. Therefore, this information has been deleted, and Table 3 has been renumbered accordingly.

Certain Spacer Installations Not Affected

A note after Table 3 has been added, to clarify that this AD does not affect the life limit of spacers P/N's 2–121–071–37–42, installed in ALF502R–3 engines. The life limit remains at 11,600 cycles-since-new.

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

Economic Analysis

There are approximately 1,600 engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on airplanes of U.S. registry would be affected by this AD, and that the prorated cost of the life reduction per engine would be approximately $7,980. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $2,394,000.

Regulatory Analysis

This final 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 final rule.

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–08 Honeywell International, Inc.: Amendment 39–12780. Docket No. 99–NE–51–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc. (formerly AlliedSignal Inc., and Textron Lycoming) ALF502 and LF507 series turbofan engines with certain first turbine rotor sealing plates, first turbine rotor discs, and turbine spacers installed. These engines are installed on, but not limited to, Bombardier (Canadair) CL600–1A11, and British Aerospace BAe 146 series and AVRO 146-RJ series 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 (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

Compliance with this AD is required as indicated, unless already done.

To prevent gas producer turbine (GPT) component failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

Drawdown Schedule for First Turbine Rotor Sealing Plate

(a) Remove from service first turbine rotor sealing plates according to the drawdown plan described in the following Table 1 of this AD, and replace with serviceable parts:

TABLE 1.—FIRST TURBINE ROTOR SEALING PLATE

Part Numbers (P/N's) 2–121–075–15, –21, –27, –28, and –36

Engine model	Cycles-in-service since new (CSN) on the effective date of this AD	Replace
(1)ALF502R, LF507–1F, and LF507–1H series	(i) Fewer than 15,000 CSN	Before accumulating 20,000 CSN.
	(ii) 15,000 or more CSN	Within 5,000 cycles-in-service (CIS) after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 25,000 CSN.
(2) All ALF502L series	(i) Fewer than 17,500 CSN	Before accumulating 18,000 CSN.
	(ii) 17,500 or more CSN	Within 500 CIS after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 23,000 CSN.

Drawdown Schedule for First Turbine Rotor Disc

(b) Remove from service first turbine rotor discs according to the drawdown plan described in the following Table 2 of this AD, and replace with serviceable parts:

TABLE 2.—FIRST TURBINE ROTOR DISC

P/N's 2–121–051–18, –24, –25, –R35, –36, –37, –44, –R52, and –R55

Engine model	Cycles-in-service since new (CSN) on the effective date of this AD	Replace
(1) ALF502R, LF507–1F, and LF507–1H series	(i) Fewer than 15,000 CSN	Before accumulating 20,000 CSN.
	(ii) 15,000 or more CSN	Within 5,000 CIS after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 25,000 CSN.
(2) All ALF502L series	(i) Fewer than 13,500 CSN	Before accumulating 14,000 CSN.
	(ii) 13,500 or more CSN	Within 500 CIS after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 21,000 CSN.

Drawdown Schedule for Turbine Spacer

(c) Remove from service turbine spacers according to the drawdown plan described in the following Table 3 of this AD, and replace with serviceable parts:

TABLE 3.—TURBINE SPACER

P/N's 2–121–071–36, –37, and –42

Engine model	First turbine rotor assembly P/N	Cycles-in-service since new (CSN) on the effective date of this AD	Replace
(1) ALF502R series (except ALF502R–3, see information in Note 2), LF507–1F, and LF507–1H series	P/N 2–121–090–63, –64, –65, –R66, or –R67.	(i) Fewer than 10,000 CSN	Before accumulating 15,000 CSN.
		(ii) 10,000 or more CSN	Within 5,000 CIS after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 20,000 CSN.
(2) ALF502R series	P/N 2–121–090–41 or –42 or if rotor assembly P/N cannot be determined.		Before accumulating 12,000 CSN.
(3) All ALF502L series	P/N 2–121–090–63, –64, –65, –R66, –R67, –91, –R92.	(i) Fewer than 13,500 CSN	Before accumulating 14,000 CSN.
		(ii) 13,500 or more CSN	Within 500 CIS after the effective date of this AD or at the next access after the effective date of this AD, whichever is earlier, but do not exceed 19,500 CSN.
(4) All ALF502L series	P/N 2–121–090–41, –42 or if rotor assembly P/N cannot be determined.		Before accumulating 10,800 CSN.

Note 2: For ALF502R–3 engines, turbine spacers P/N's 2–121–071–37/-42 are not affected by this drawdown plan. Their life limit remains at 11,600 CSN.

Reduced Life Limits

(d) Except for the drawdown provisions of paragraphs (a), (b), and (c) of this AD and the approvals granted under the provisions of paragraph (f) of this AD, no first turbine rotor sealing plates, first turbine rotor discs, or turbine spacers may remain in service beyond the cyclic life limits provided in paragraphs (a), (b), or (c) of this AD.

Definitions

(e) For the purposes of this AD, access is defined as when the engine has been disassembled to where the affected part may be removed.

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, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

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 done.

Effective Date

(h) This amendment becomes effective on July 17, 2002.

Issued in Burlington, Massachusetts, on June 5, 2002.

Francis A. Favara,

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

[FR Doc. 02–14697 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD; Amendment 39–12778; AD 2002–12–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) PW2000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to certain Pratt & Whitney (PW) PW2000 series turbofan engines. That AD currently requires revisions to the engine manufacturer's Time Limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action modifies the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements. This amendment is prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts that has indicated the need for mandatory inspections. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date July 17, 2002.

ADDRESSES: The information referenced in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–21–09, Amendment 39–11941 (65 FR 65730, November 3, 2000), which is applicable to Pratt & Whitney (PW) PW2000 series turbofan engines, was published in the

Federal Register on December 27, 2001 (66 FR 66819). That action proposed to modify the airworthiness limitations section of the manufacturer's manual and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

Comments

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

Typographical Errors

One commenter states that two typographical errors exist in the MANDATORY INSPECTIONS table of the proposal. Disk, LPT 4th stage EM Manual Section reads 72–35–41, but should read 72–53–41, and Disk, LPT 5th stage EM Manual Section reads 72–32–51, but should read 72–53–51.

The FAA agrees. The typographical errors are corrected in the final rule.

Question Regarding HPC Hub Inspections

One commenter asks why mandatory inspections of the HPC hub are not required by the proposed rule.

The FAA agrees that the proposed rule should include mandatory inspections of the HPC hub (HPC turbine drive shaft assembly). Therefore, EM Manual Section 72–35–08 has been added to the final rule to include Inspection/Check –05 for the HPC turbine drive shaft assembly.

Economic Effect

One commenter states that the additional cost of approximately $1,200 per year per engine visit, for enhanced disk inspection will not result in any hardship to the airline and will not have a significant effect on the operation. The FAA agrees.

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

Economic Analysis

The FAA estimates that 724 engines installed on airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 work hours per engine to do the required actions. The average labor rate is $60 per work hour. The cost of the added inspections per engine is approximately $1,200 per year, with the approximate total cost to the U.S. fleet of $868,800 per year.

Regulatory Analysis

This final 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 final rule.

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11941 (65 FR 65730, November 2, 2000) and by adding a new airworthiness directive, Amendment 39–12778, to read as follows:

2002–12–06 Pratt & Whitney: Amendment 39–12778. Docket No. 98–ANE–61–AD. Supersedes AD 2000–21–09, Amendment 39–11941

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143, series turbofan engines. These engines are installed on, but not limited to Boeing 757 series and Ilyushin IL–96T series 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 as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Within 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, as appropriate for PW PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143 series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

Mandatory Inspections

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in PW2000 Engine Manuals 1A6231 and 1B2412:

Nomenclature	Part No.	EM manual section	Inspection/check	Subtask
Hub, LPC Assembly	ALL	72–31–04	-06	
Disk, HPT 1st Stage	ALL	72–52–02	FPI entire disk per 72–52–00, Inspection/Check-02	72–52–02–230–007
Hub, HPT 2nd Stage	ALL	72–52–16	FPI entire hub per 72–52-00, Inspection/Check-02	72–52–16–230–007

Nomenclature	Part No.	EM manual section	Inspection/check	Subtask
Hub, HPC Front	ALL	72–35–02	-05	
Disk, HPC Drum Rotor Assembly (7–15)	ALL	72–35–03	-04	
Disk, HPC Drum Rotor Assembly (16–17)	ALL	72–35–10	-05	
Disk, HPC 16th Stage	ALL	72–35–06	-04	
Disk, HPC 17th Stage	ALL	72–35–07	-04	
HPC Turbine Drive Shaft Assembly	ALL	72–35–08	-05	
LPC Drive Turbine Shaft	ALL	72–32–01	-06	
Hub, Turbine Rear	ALL	72–53–81	-06	
Disk, LPT 3rd stage	ALL	72–53–31	-01	
Disk, LPT 4th Stage	ALL	72–53–41	-01	
Disk, LPT 5th Stage	ALL	72–53–51	-01	
Disk, LPT 6th Stage	ALL	72–53–61	-01	
Disk, LPT 7th Stage	ALL	72–53–71	-01	

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of Federal Aviation Regulations (14 CFR 43.16), these enhanced inspections must be performed only in accordance with the TLS of the appropriate PW2000 series engine manuals.

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 (PMI), 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.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Effective Date

(f) This amendment becomes effective on July 17, 2002.

Issued in Burlington, Massachusetts, on June 4, 2002.

Francis A. Favara,

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

[FR Doc. 02–14695 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–63–AD; Amendment 39–12775; AD 2002–12–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS332L2 helicopters. This action requires removing the main rotor shaft non-rotating scissors (non-rotating scissors) from the swashplate balljoint and inspecting for friction or play in the hinges between the two links of the non-rotating scissors, or between the non-rotating scissors link and the flared housing, and replacing the non-rotating scissors, if necessary. This amendment is prompted by the discovery of in-service damage to main rotor shaft non-rotating scissors attachment hinges. The actions specified in this AD are intended to prevent friction on non-rotating scissors, failure of the swashplate, loss of main rotor pitch control, and subsequent loss of control of the helicopter.

DATES: Effective June 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9_asw_adcomments@faa.gov*.

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

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332L2 helicopters. The DGAC advises that some cases of in-service damage to the main rotor shaft non-rotating scissors attachment hinge have been discovered.

Eurocopter has issued Eurocopter Alert Service Bulletin No. 05.00.56, dated February 1, 2001, which specifies a check of the non-rotating scissors hinges on the main rotor shaft for evidence of seizure on the interface of the various tungsten-carbide bushings of the hinges that may lead to the seizure of a hinge. The DGAC classified this service bulletin as mandatory and issued AD 2001–085–018(A), dated March 7, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that may be certificated for operation in the United States at a future date.

This unsafe condition is likely to exist or develop on other helicopters of the same type design if registered in the United States. Therefore, this AD is being issued to prevent friction on the non-rotating scissors, failure of the swashplate, loss of main rotor pitch control, and subsequent loss of control of the helicopter. This AD requires removing the non-rotating scissors from the swashplate balljoint and inspecting for friction or play in the hinges between the two links of the non-rotating scissors, or between the non-rotating scissors link and the flared housing, and replacing the non-rotating scissors if friction or play is detected. The actions must be accomplished in accordance with the service bulletin described previously.

None of the Eurocopter Model AS332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $360 per helicopter.

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–63–AD.'' The postcard will be date stamped and returned to the commenter.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–03 Eurocopter France: Amendment 39–12775. Docket No. 2001–SW–63–AD.

Applicability: Model AS332L2 helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent friction on the main rotor shaft non-rotating scissors (non-rotating scissors), failure of the swashplate, loss of main rotor pitch control, and subsequent loss of control of the helicopter, accomplish the following:

(a) For non-rotating scissors with less than 275 hours time-in-service (TIS), before reaching 275 hours TIS and then at intervals not to exceed 275 hours TIS, remove the non-rotating scissors from the swashplate balljoint and inspect for any friction or play in accordance with paragraph 2.B.1 of the Accomplishment Instructions in Eurocopter Alert Service Bulletin No. 05.00.56, dated February 1, 2001 (ASB).

(b) For non-rotating scissors with 275 or more hours TIS, within 50 hours TIS and then at intervals not to exceed 275 hours TIS, remove the non-rotating scissors from the swashplate balljoint and inspect for friction or play in accordance with paragraph 2.B.1 of the Accomplishment Instructions in the ASB.

(c) If friction or play is present, replace the non-rotating scissors with airworthy parts.

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

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

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

(f) The inspections and replacement (if replacement is necessary) shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1 of Eurocopter Alert Service Bulletin No. 05.00.56, dated February 1, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 12, 2002.

Issued in Fort Worth, Texas, on May 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–14567 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–60–AD; Amendment 39–12774; AD 2002–12–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332L2 helicopters. This action requires visually inspecting the engine compartment fire extinguisher bottle (bottle) for correct placement and installation of the percussion heads and attachment cartridges and if, incorrectly installed, making the necessary corrections. This action also requires marking the bottle's indicating label with ''Amendment A'' after making the necessary corrections. This amendment is prompted by the discovery that some of the spare bottles have interchanged percussion heads. The actions specified in this AD are intended to prevent release of the fire-extinguishing agent into the wrong engine compartment, failure to extinguish a fire, and subsequent loss of control of the helicopter.

DATES: Effective June 27, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–60AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

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

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355 fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332L2 helicopters. The DGAC advises that some bottles were delivered as spares with interchanged percussion heads.

ECF has issued Alert Telex No. 26.00.12, dated October 3, 2001 (Telex), which specifies checking the bottle's percussion heads and attachment cartridges to determine if they are interchanged. The Telex states that if a bottle is equipped with interchanged percussion heads and has been connected in compliance with the Aircraft Maintenance Manual task 26.21.00.051, in the event of a fire in one engine compartment, the pilot will not be able to extinguish the fire. The Telex specifies procedures for modifying a bottle if an anomaly is found. The DGAC classified this Telex as mandatory and issued AD No. T2001–471–020(A), dated October 5, 2001, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC,

reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to prevent the release of the fire-extinguishing agent into the wrong engine compartment, failure to extinguish a fire, and subsequent loss of control of the helicopter. This AD requires the following:

- Before further flight, visually inspect each bottle for correct placement and installation of the percussion heads and attachment cartridges.
- Before installing, visually inspect each spare bottle for correct positioning of the percussion heads and, if necessary, correct the position of the percussion heads.
- Record ''Amendment A'' on bottles that are correctly installed and on the Equipment Log Card of the bottle.

The actions must be accomplished in accordance with the Telex described previously.

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

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to inspect both bottles and 5 work hours to reconfigure each bottle, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $360 per helicopter.

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–60–AD.'' The postcard will be date stamped and returned to the commenter.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–12–02 Eurocopter France: Amendment 39–12774. Docket No. 2001–SW–60–AD.

Applicability: Model AS332L2 helicopters, with engine fire extinguishing bottle (bottle), part number (P/N) 862690–00, installed, certificated in any category.

Note 1: Bottles with ''Amendment A'' noted on the bottle's indicating label (label) are not subject to the applicability of this AD.

Note 2: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Before further flight, unless accomplished previously.

To prevent release of the fire-extinguishing agent into the wrong engine compartment, failure to extinguish a fire, and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect each bottle for correct connection to the bottle percussion heads and attachment cartridges in accordance with the Accomplishment Instructions, paragraphs 2.B.1. through 2.B.2.2., of Eurocopter France Alert Telex No. 26.00.12, dated October 3, 2001 (Telex).

(1) If the percussion heads and attachment cartridges are connected to the bottle

correctly, record ''Amendment A'' on the bottle's label and on the Equipment Log Card (FME) of the bottle, close the sliding cowling, and remove the access equipment.

(2) If the percussion heads and the attachment cartridges are not connected to the bottle correctly, reconfigure each bottle in accordance with the Accomplishment Instructions, paragraphs 2.B.4. through 2.B.4.4., of the Telex.

(b) Before installing, inspect any spare bottle to ensure that the yellow percussion head is located below the pressure gage and that the gray percussion head is located opposite the pressure gage.

(1) If the percussion heads are properly located, record ''Amendment A'' on the bottle's label and on the FME of the bottle.

(2) If the percussion heads are not located properly, loosen the union nuts; appropriately interchange the percussion heads, tighten the union nuts by hand, and record ''Amendment A'' on the label and on the FME of the bottle.

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

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

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

(e) The inspections and modifications shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.1. through 2.B.2.2., and paragraphs 2.B.4 through 2.B.4.4., of Eurocopter France Alert Telex No. 26.00.12, dated October 3, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 27, 2002.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD T2001–471–020(A), dated October 5, 2001.

Issued in Fort Worth, Texas, on May 31, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–14568 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 172

[FHWA Docket No. FHWA–98–4350]

RIN 2125–AE45

Administration of Engineering and Design Related Services Contracts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the regulation on the administration of engineering and design related services contracts in order to establish procedures to be followed when using Federal-aid highway funds for the procurement of engineering and design related services, materials, equipment, or supplies. The regulation describes procurement methods contracting agencies are to use when acquiring these services or related items. This rule implements 23 U.S.C. 112(b), as amended, by requiring States to award Federal-aid highway engineering and design service contracts: In accordance with the provisions of title IX of the Federal Property and Administrative Services Act of 1949, by use of equivalent State qualifications-based procedures, or unless a State has previously established by statute a formal procurement procedure for engineering and design related services prior to June 9, 1998. This regulation does not apply to design-build contracts, which will be covered in another regulation.

DATES: This rule is effective July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Moss, Office of Program Administration, (HIPA–10), (202) 366–4654, or Mr. Steven Rochlis, Office of the Chief Counsel, (HCC–30), (202) 366–1395, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the URL: *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at: *http://www.access.gpo.gov/nara.*

Background

The FHWA issued a notice of proposed rulemaking (NPRM) on July 18, 2000, at 65 FR 44486. Comments were received from 12 State DOTs, two companies, and one organization. The regulation on the administration of engineering and design related service contracts, 23 CFR part 172, draws its authority from 23 U.S.C. 112. Title 23, U.S.C., section 112 references the provisions of title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92–582, 86 Stat. 1278 (1972); 40 U.S.C. 541, *et seq.*) which provides the qualifications-based procedures to be followed for the selection of engineering and design related services. Section 307 of the National Highway System Designation Act of 1995 (NHS Act), Public Law 104–59, 109 Stat. 568, modified 23 U.S.C. 112 by requiring grantees of Federal-aid highway funds to accept indirect cost rates for architectural and engineering firms as long as these rates are established in accordance with the Federal Acquisition Regulations (FAR) (Title 48, Code of Federal Regulations) and these rates are accepted by a cognizant Federal or State agency if such rates are not under dispute. The law also specifies that once a firm's indirect cost rate is accepted, the grantee shall apply those indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment. The NHS Act also provided a period of time in which State Departments of Transportation (State DOTs) could adopt statutes to allow use of alternate State procedures other than those provided for in the NHS Act.

Section 1205 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (1998), further modified 23 U.S.C. 112(b) by removing the provision allowing State DOTs to adopt alternate procedures for the procurement of design and engineering consultants.

The changes made to 23 U.S.C. 112(b) by these two laws, as well as provisions in 23 U.S.C. 106(c) relating to the assumption by the State of responsibilities of the Secretary for project design and construction, require the FHWA to modify 23 CFR part 172, subpart A—Procurement Procedures. In addition, the FHWA adds several new

terms to the definition section to clarify existing terms used in the regulation.

The small purchase procedures section is revised by raising the maximum value for small purchases from $25,000 to the value allowed in 41 U.S.C. 403(11), which is currently $100,000.

The references to Certification Acceptance (CA), and § 172.15, Alternate Procedures, which were incorporated into 23 CFR part 172 to implement Certification Acceptance, are removed since Certification Acceptance was repealed by section 1601 of the TEA–21.

Reference to the Secondary Road Plan (SRP) and the Combined Road Plan (CRP) demonstration project, are removed since these programs are no longer being funded.

Comments on Proposed Regulation

172.1 Purpose and Applicability

The Michigan DOT requested that a reference be made to 41 U.S.C. Subchapter IV, Procurement Provisions, after the reference to the common grant rule found at 49 CFR part 18. Title 41, U.S.C., Subchapter IV, refers to contracts made directly by the United States Government and does not directly apply to grants to States and Counties, therefore, this provision was not incorporated into the final rule.

Section 172.3 Definitions

The Texas DOT requested that the term ''private sector engineer and design firms'' be removed from the definition section since the term is not used in the regulation. The FHWA agrees with the comment and the regulation has been modified accordingly.

Several comments requested the retention of definitions for ''fixed fee'' and ''prenegotiation audit.'' Although still allowed, the regulation no longer specifies requirements for the use of ''fixed fee'' contracts or the use of a ''prenegotiation audit,'' but instead refers to State procedures. Since these terms are no longer used in the final rule, they were removed.

The New York DOT suggested that in the definition of ''cognizant agency,'' the term ''State agency'' is too broad and that the term ''State Highway/Transportation Agency'' would be preferred. The generic definition of ''cognizant agency'' is ''Federal or State agency.'' Some States may have audit divisions that are not part of the State Highway/Transportation Agency, therefore the FHWA prefers a broader concept.

Several commenters requested that the definition of ''cognizant agency'' as well as the procedure to get a cognizant agency audit should be set forth in greater detail in the regulation. Many commenters suggested that the FHWA should adopt the procedure and definition approved by the American Association of State Highway and Transportation Officials (AASHTO) Audit Subcommittee. The AASHTO Audit Subcommittee stated the following:

A ''cognizant agency'' is any one of the following:

- Federal Agency
- The Home State (*i.e.,* State where the firm's accounting and financial records are located)
- A Non-Home State to whom the Home State has transferred cognizance in writing for the particular indirect cost audit of a firm.

Cognizant audit is achieved by any one of the following methods:

- A Cognizant Agency performs or directs the work of a Certified Public Accountant (CPA) who performs the indirect cost audit.
- A Non-Home State auditor or CPA working under the State's direction issue an audit report and the Home State issues a letter of concurrence. If the Home State does not accept the audit of another State, the Home State will have 180 days from receipt to issue a cognizant audit; otherwise, the Non-Home State audit report will be cognizant for the 1 year applicable accounting period.
- An indirect cost audit performed by a CPA hired by the firm will become a cognizant audit if one of the following conditions is met:

(a) The Home State reviews the CPA's working papers and the Home State issues a letter of concurrence with the audit report.

(b) A Non-Home State reviews the CPA's working papers and issues a letter of concurrence with the CPA's report which is then accepted by the Home State. If the Home State does not accept the Non-Home State review, the Home State will have 180 days from receipt to complete a review of the CPA audit report and either concur with it, modify it, or reject it due to a material error requiring re-submittal; otherwise the CPA audit report with which the Non-Home State has concurred will be cognizant for the 1 year applicable accounting period.

The FHWA believes that the AASHTO Audit Subcommittee procedures have merit, but the FHWA has determined that these procedures should be thoroughly tested under implementing guidance to be disseminated to the States. Therefore the Audit Subcommittee's approved definition and procedure is not included in the final regulation.

The Oregon DOT was concerned that the one year term for overhead rates was not defined. To assist in the use of this regulation a new definition was added based on material from the FAR. The new definition defines one year applicable accounting period as the annual accounting period for which financial statements are regularly prepared for the consultant.

Several commenters recommended that the term ''audit'' be defined in the regulation. Some commenters suggested using the definition: ''An audit performed in accordance with Governments Auditing Standards promulgated by the United States General Accounting Office.'' The FHWA added a definition of the term audit to the final rule.

Section 172.5 Methods of Procurement

Section 172.5(a)(1) Competitive Negotiations

The Wisconsin DOT was concerned that a key point of the Brooks Architect-Engineers Act (40 U.S.C. 541–544) was not included in the regulation, i.e., price is not to be a factor in the analysis and selection phase. The FHWA agrees that this is a key point in the Brooks Bill procedure and, as such, is already covered by the Brooks Bill requirements. Due to its importance, and to be clear on this point, we have added a sentence in § 172.5(a)(1) restating that price is not to be a factor in the analysis and selection phase.

TransTech Management, Inc. commented on how various States have experimented with alternative selection practices, one being the best value approach, and stated:

> The premise behind this approach is that the consultants are selected in a two-tiered selection process that considers the value of a project without compromising quality or safety. In this approach the U.S. DOT identifies a short list of qualified firms, then the final selection is based on a set of criteria that includes qualifications, cost, and possibly other factors.

TransTech Management also suggested that best value be allowed for design consultant selection.

The Texas Transportation Commission also recommends a best value approach be taken rather than a strictly qualifications based selection process in the Brooks Bill. In response to these comments, the FHWA maintains that 23 U.S.C. 112 requires that the Brooks Bill method be used in the selection of design consultants when Federal-aid funds are used, except if alternate procedures have been adopted

by the State prior to enactment of the TEA–21. Accordingly, no change was made to the regulation, however the Secretary has authority to conduct innovative contracting research under 23 U.S.C. 502(a) on an experimental basis.

The New Jersey DOT recommended that ''the rules should provide the flexibility that would allow competitive bids on certain types of fixed scope projects.'' The FHWA has allowed a simplified small purchases procurement procedure which provides substantial flexibility to the State. Nevertheless, for procurement over the small procurement threshold, the Brooks Act method is required by law, except if a State has adopted an alternative procedure enacted by the State prior to the enactment of the TEA–21, therefore, no change was made in the regulation.

The Michigan DOT was concerned that a cost analysis was not specifically required for competitive and non-competitive purchase procedures. For competitive procedures we require the Brooks Act requirements or equivalent State qualifications based procedures unless a formal statutory procedure was adopted by State statute prior to enactment of the TEA–21. The Brooks Act requires that the value of services to be rendered as well as the scope, complexity, and professional nature be considered in the negotiations. The FHWA believes that these requirements are sufficiently adequate for competitive purchase procedures. Non-competitive procurement procedures are generally an exception to competitive procurement procedures for Federal-aid highway projects and will continue to require review and approval by the FHWA before this procedure may be used. This review may include a cost analysis as well as a review of other supporting material submitted by the State before approval is obtained. Based on the above discussion, the FHWA believes that the rule adequately covers the concerns expressed in the comment.

The Michigan DOT requested that we add a section for fixed fees. Its comment states: ''The determination of the Fixed Fee shall take into account the size, complexity, duration and degree of risk involved in the work and shall otherwise comply with 41 U.S.C. 254. The establishment of the fixed fee shall be project specific.'' The FHWA believes that the Brooks Act procedures that require the value of services to be rendered, the scope, the complexity, and the professional nature be considered in the negotiations addresses this issue for fixed fees used in competitive purchase procedures. The material in 41 U.S.C. 254 is intended for Federal contracts rather than purchases by grantees using Federal assistance monies, therefore the FHWA did not add the requested reference to 41 U.S.C. 254.

Section 172.5(a)(2) Small Purchase

The New Jersey DOT suggested that ''consideration should be given to raising the $100,000 simplified acquisition threshold to $125,000 to allow for inflation.'' The FHWA intends to follow the law for small purchase procurement found in 41 U.S.C. 403(11), which currently provides that $100,000 is the maximum amount for small purchase procurement. However, the FHWA did revise the proposed regulation to reference the simplified acquisition threshold in 41 U.S.C. 403(11) rather than just listing the current $100,000 amount. When the amount is revised in 41 U.S.C. 403(11), as it has been in the past, the simplified acquisition threshold in the final rule will also automatically reflect that new limit.

The Wisconsin DOT expressed concern with how the Brooks Act will apply to small purchase procedures. The previous regulation allowed contractors to use small purchase procedures in 23 CFR 172.7(b). The FHWA is continuing this practice by allowing relatively simple and informal procurement methods for small purchase design contracts where an adequate number of qualified sources are reviewed, as stated in 49 CFR 18.36 of the common grant rule. Also, the State's own procedures for small purchases where it uses with its own funds may be used for federally funded projects in accordance with 49 CFR 18.36 and 49 CFR 18.37 where the total contract amount including contract amendments do not exceed the small purchase threshold amount in 41 U.S.C. 403(11).

The Oregon DOT expressed concern regarding how the FAR audit requirements would apply for small purchase procedures. The FHWA's interpretation is that since small purchase threshold contracts may follow a simplified acquisition consistent with 49 CFR part 18, the FAR audit requirements of the final rule at 23 CFR 172.7(a) and (b) are not required to be applied to small purchase procedures. If the audits required by 23 CFR 172(a) and (b) are readily available they should be used. In the final rule, 23 CFR 172.7(e) provides that the States are responsible to reasonably assure that proper recordkeeping and accounting procedures are followed.

Section 172.5(a)(4) State Statutory Procedures

A comment from the HNTB Corporation questioned the use of the TEA–21 enactment date of June 9, 1998, throughout the regulation rather than the date of one year after the enactment of the NHS Act of November 28, 1995, to determine when a State could no longer enact legislation allowing it to adopt an alternate procedure whereby the subparagraphs added by section 307 of the NHS Act did not apply.

The NHS Act added subsections (b)(2)(C) through (G) to 23 U.S.C. 112 which included single audit requirements and provided that indirect cost rates shall not be limited by administrative or de facto ceilings. After the NHS Act was passed, a State had one year or a full State legislative cycle to enact laws allowing a State to adopt an alternate procedure. However, until the TEA–21 was enacted, States were free to adopt by statute a formal procedure for the procurement of design services which differed from Brooks Act procurement under 23 U.S.C. 112(b)(2)(B).

The FHWA's analysis of the statutory history of 23 U.S.C. 112 is that prior to the enactment of TEA–21, the Congress permitted a State to enact by State statute an alternate procurement procedure that was different from the requirements set forth in the NHS Act; therefore, the TEA–21 enactment date of June 9, 1998, is the correct date to use in the regulation. Nevertheless, the mere fact that a State adopted a formal statutory procedure for procurement of Architectural and Engineering services prior to enactment of TEA–21 does not permit a State to establish a ceiling on overhead rates where such statute did not address overhead ceiling rates.

Section 172.7 Audits

Section 172.7(a) Performance of Audits

Several commenters were concerned about the scope of the FAR audit requirements in § 172.7(a) and the hardships that States may experience from the requirements of numerous audits on contracts and subcontracts. Although the law requires that all contracts and subcontracts procured in accordance with 23 U.S.C. 112(b)(2)(C) be audited in compliance with cost principles contained in the part 31 of the FAR, the FHWA has determined that the State should determine the scope of those audits in their own procedures. The FHWA modified § 172.7 of the final rule to reflect the States' responsibility. The section now says: ''When State procedures call for audits of contracts or subcontracts for engineering design

services, the audit shall test compliance with the requirements of the cost principles contained in the Federal Acquisition Regulations provided in 48 CFR part 31.'' Additionally, in many cases consultants selected by the Brooks Act procedure hire other consultants for small specialty jobs with State approval. Since these small subconsultant contracts were not procured in accordance with 23 U.S.C. 112(b)(2)(A), the audit requirements of this section would not apply.

The Oregon DOT, along with others, commented that 48 CFR part 31 (FAR 31) does not provide enough guidance. It is not the intent of this regulation to clarify the audit procedures in the FAR. However, additional guidance on the FAR may be obtained at the following internet site *http://www.arnet.gov.*

The Oregon DOT also commented that in § 172.7(a), audits are performed to standards rather than to principles. The Oregon DOT comment states: ''This clause requires that audits comply with the cost principals contained in the FARs. Audits comply with audit standards rather than cost principles. Audits, while complying with audit standards, determine the level at which costs comply with cost principles. Changing the wording to read, '* * * the audit shall determine compliance with the cost principles * * *' (or some similar wording) would correct this discrepancy.'' The FHWA agrees with the Oregon DOT's comment and has made minor wording changes in the regulation to reflect that audits are preformed ''to test'' compliance with the cost principles rather than ''to'' compliance with the cost principles.

Section 172.7(b) Audits for Indirect Cost Rate

The Oregon DOT was concerned that the FHWA has misinterpreted the requirements of section 307 of the NHS Act, specifically, 23 U.S.C. 112(b)(2)(D) and (E) and believes that the requirements for accepting the indirect cost rates fall on the consultant rather than on the contracting agency.

The following language from the conference report for the NHS Act (H.R. Conference Report No. 104–345, at 82 (1995)) which quotes from identical sections in the House (H.R. Rep. No. 104–246, (1995)) and Senate report (S. Rep. No. 104–86, (1995)) clarifies the meaning of the statute:

> The recipient of Federal funds must accept and use indirect cost rates established by a government agency in accordance with Federal Acquisition Regulations for one-year applicable accounting periods in estimating, negotiating, and administering contracts. Recipients must notify affected firms before requesting or using the cost and rate data and must keep the information confidential.

Based on the legislative history of this provision it is clear that the government agency, as the recipient of Federal funds, must notify the firms of cost data used and the government must establish the overhead rates. Therefore, no change was made to the regulation.

Several commenters were concerned about the requirements that the audit for the overhead rate could last for only one year. The Texas DOT commented that it does not believe it would be prudent to require an audit each year for a multi-year consulting contract if the audited indirect rate is acceptable to both contracting parties at the time of contract negotiation and execution. The FAR in 48 CFR 31.203(e) states that ''* * *, the base period for allocating indirect costs will normally be the contractor's fiscal year* * *. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.''

The guidance in the FAR would require the use of several base periods for a contract that is longer than one year. The language in 49 CFR 18.36(a) requires the use of State procedures in the administration of contracts with Federal grant funds, provided it does not conflict with Federal statutes. The FHWA agrees that it is reasonable to allow an audit for overhead rates to be valid for contracts longer than a year provided the consultant and the State agree to such a longer period. The final rule requires the consultant's indirect cost rates for its one-year applicable accounting period to be applied to the contract, however, once an indirect cost rate is established for a contract it may be extended beyond the one year applicable accounting period provided all concerned parties agree. Additionally, the final rule states that an agreement to the extension of the one-year applicable period shall not be a condition of contract award.

The Wisconsin DOT expressed concern that a State could not accept a lower overhead rate freely offered by a consultant firm. The Wisconsin DOT believes the proposed rule should be modified to make it clear that contracting agencies are not prohibited from using indirect cost rates which are unilaterally reduced by consultants. It believes that the intent of the law is to prevent contracting agencies from establishing ceilings on indirect cost rates, not to prevent firms from offering cost reductions. Furthermore, Wisconsin DOT states that occasionally firms will experience swings in their business cycles which could result in high cost rates preventing them from being able to negotiate a reasonable total cost on their contract.

The FHWA agrees there are many reasons why an overhead rate for a firm may be unusually high for a short period of time. In such cases, a firm may believe that it would be in its best interest to offer a lower rate. The FHWA agrees that a consultant should be free to offer a lower overhead rate than the one determined by a cognizant Federal or State government agency, and that the contracting agency should be free to accept it provided such rate is offered voluntarily by the consultant. Under no circumstances, however, shall a contracting agency require a lowering of the overhead rate. We have added language to § 172.7(b) to address this comment.

There were several comments concerning the procedure used to arrive at a cognizant agency audit. Many comments requested that the procedure passed by the AASHTO Subcommittee on Audits, in conjunction with the American Consultant Engineers Council (ACEC), be used. The FHWA issued an interim procedure to obtain a cognizant agency audit on December 10, 1997, in the form of a question and answer memorandum which can be viewed at the FHWA web site at: *http://www.fhwa.dot.gov/programadmin/consultant.html.* The FHWA believes that the AASHTO Audit Subcommittee procedures have merit, but the FHWA has determined that these procedures should be thoroughly tested under implementing guidance to be disseminated to the States. Therefore the Audit Subcommittee's proposed definition and procedure is not included in the final regulation.

Section 172.7(c) Disputed Audits

The FHWA received several comments raising a concern that disputed audits were not well defined. The FHWA clarifies § 172.7(c) of the final rule to address these comments in § 172.7(c) as follows: ''Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective user.''

Section 172.7(d) Prenotification; Confidentiality of Data

The Wisconsin DOT was concerned about with whom the State may share indirect cost and rate data. The Wisconsin DOT believes that the requirement for permission only applies

exclusively to the release of information to other firms and government agencies. Request for information from the press or ordinary citizens will be in accordance with State statutes.

The FHWA determination is that 23 U.S.C. 112(b)(2)(F) allows States to share audit information about a consultant with other recipients (States) and subrecipients of Federal-aid highway funds. States and subrecipients are only required to notify the consultant when such information is used or exchanged with another State or subrecipient to assist a State or subrecipient in complying with the State or subrecpient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this regulation.

However when such audit information is sought by a firm or a government agency (when the government agency is seeking the information for a purpose unrelated to compliance with this regulation), the cost data shall not be provided except by written permission of the audited firm. Moreover, as pointed out by the Wisconsin DOT, the plain language of the law did not exclude ordinary citizens or the press from obtaining this data. The FHWA's position concerning requests from the press or private citizens for this data is that State and Federal information accessability statutes, as applicable, will control such release consistent with 23 U.S.C. 112(b)(2)(F) which provides: ''If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.'' The regulation was modified at § 172.7(d) to address this issue by adding language that prohibits the release of this information if prohibited by law; however, should a release be required by law, or court order, the final rule states that such release shall make note of the confidential nature of the data.

Section 172.9 Approvals

Section 172.9(a) Written Procedures

The Texas DOT was concerned that the FHWA division offices were going to review all the county and city procedures for subgrants that the State may issue. The Texas DOT commented that it appears that the FHWA is assuming responsibility for approving all local governmental entity contracting procedures and revisions for federally funded engineering and design services. In Texas alone, there are 254 counties that have adopted various procedures that are subject to review by TxDOT through oversight agreement with the FHWA and the State's statutes.

It is not the FHWA's intent to review all county and city procedures for State subgrants. Although 49 CFR 18.37 addresses subgrants and requires the State ensure that subgrants meet State and Federal requirements, the FHWA felt it was necessary to cover the topic in the final rule. The FHWA added a new sentence to § 172.1 which states, ''Recipients of Federal funds shall ensure that their subrecipients comply with Federal regulations'' and made minor revisions to § 172.9(a) of the final rule.

For ease of reference the following distribution table is provided:

Old Section	New Section
172.1(a)	172.1 Revised.
172.1(b)	172.1 Revised and 172.5(a)(4) Revised.
172.3	172.3 Revised.
Audit	Added.
Cognizant agency	Added.
Competitive negotiation.	Revised.
Contract modification	Removed.
Extra work	Removed.
Fixed fee	Removed.
One-year applicability accounting period.	Added.
Prenegotiation audit	Removed.
Private sector engineering and design firms.	Removed.
Scope of work	Removed.
172.5(a)	172.9(d) Revised.
172.5(b)	172.9(a). Revised.
172.5(c)	Removed.
172.5(d)	172.1 Revised.
172.5(e)	172.5(b) Revised.
172.5(f)	172.9(b) Revised.
172.7 introductory paragraph.	172.5 introductory paragraph revised and 172.5(a)(1) Revised.
172.7(a)	172.5(a)(1) Revised.
172.7(a)(3)(ii)(B)	172.5(a)(4) Revised.
172.7(b)	172.5(a)(2) Revised.
172.7(c)	172.5(a)(3) Revised.
172.7(c)(1)	172.5(a)(3) Revised.
172.7(c)(1)(i)	172.5(a)(3)(i). No change.
172.7(c)(1)(ii)	172.5(a)(3)(ii). No change.
172.7(c)(1)(iii)	172.5(a)(3)(iii). No change.
172.7(c)(2)	Removed.
172.9(a)	172.7(a) Revised.
None	172.7(b) Added.
None	172.7(c) Added.
None	172.7(d) Added.
172.9(b)	Removed.
172.9(c)2	172.5(c) Revised.
172.9(c)(1), (3), (4)	Removed.
172.9(d)	Removed.
None	172.9(b) and (c) Added.
172.11	Removed.
172.13	Removed.
172.15	Removed.
172.21, 172.23 and 172.25.	Removed.

Section-by-Section Analysis

Section 172.1 Purpose and Applicability

The statement of purpose and applicability was revised to remove the references to the Certification Acceptance Plans that were repealed by the TEA–21; to remove an obsolete reference to the Secondary Road Plans; and to remove the reference to Combined Road Plans because the Secondary and Combined Road programs are no longer being funded. A new sentence is added requiring recipients of Federal funds to ensure that their subrecipients comply with Federal regulations. Additionally, paragraph (b) was revised to limit the use of State statutes for an alternate procedure to those enacted into law before June 9, 1998 (the date the TEA–21 was enacted), and redesignated as § 172.5(a)(4).

Section 172.3 Definitions

The term ''audit'' is added to the list of definitions as a review to test the contractor's compliance with the requirements of cost principles contained in 48 CFR part 31.

The term ''cognizant agency'' is added to the list of definitions and is defined as any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the requirements of the cost principles contained in 48 CFR part 31.

The term ''One-year applicable accounting period'' is added to the list of definitions and is defined as the accounting period for which annual financial statements are regularly prepared for the consultant.

The term ''competitive negotiation'' is revised to permit the use of procurement procedures enacted into State law prior to the enactment of TEA–21 (June 9, 1998).

The terms ''contract modification,'' ''extra work,'' ''fixed fee,'' ''prenegotiation audit,'' ''scope of work'' and ''private sector engineering and design firms'' were removed since they are not used in the new regulation.

Section 172.5 General Principles

This section is removed from the regulation. Most of the material was reorganized and moved to other sections. The provisions of paragraph (a), the consultant services in management

roles, are revised and moved to § 172.9(d).

Paragraph (b), written procedures, is redesignated as § 172.9(a).

The provisions of paragraph (c), Prenegotiation audits is removed. The FHWA received several comments expressing concern over the removal of the requirements for prenegotiation audits. These comments indicate that prenegotiation reviews may not be allowed or not be eligible for Federal-aid funds which may prevent the State from being able to assure that the consultant has the proper procedures and an adequate accounting system to meet Federal requirements. The FHWA never intended to prevent the performance of prenegotiation audits and reviews, but wanted to give the States greater control over when they are used. With the required use of cognizant audits for overhead rates, the need for prenegotiation audits and reviews may be greatly reduced. However, prenegotiation audits are appropriate because the Brooks Act clearly requires agencies to negotiate contracts at a compensation determined to be ''fair and reasonable to the Government.'' Also, a prenegotiation audit may be the best way to obtain detailed cost information to determine the validity of a firm's cost proposal, and to assure that the consultant has adequate knowledge of cost eligibles and documentation requirements. The expenses for prenegotiation audits and reviews would be eligible for Federal-aid funds under 23 U.S.C. 121 and 23 CFR 1.11.

The provisions of paragraph (d), State responsibility in local agency contracts, were reduced and included as part of § 172.1.

The requirements of paragraph (e), the Disadvantaged Business Enterprise program, are specified under 49 CFR Part 26. Section § 172.5(e), is redesignated as § 172.5(b).

The requirements of paragraph (f), Contractual responsibilities, are revised and moved to § 172.9(b). The section is revised to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4). Because States would be responsible for approving contracts and settlements, provided such contracts and settlements follow the same policies and procedures as the State would follow using State funds, there is a reduced requirement that such settlements be approved by the FHWA.

Section 172.7 Methods of Procurement

This section is redesignated as § 172.5 and revised. Generally, this section covers the methods that can be used for procurement of design engineering services. The same methods are still in the regulations, but have been simplified. The small purchase section is revised by raising the maximum amount for procurement by small purchase procedures from $25,000 to $100,000 and indexing the amount to conform to the simplified acquisition threshold set in 41 U.S.C. 403(11) and 49 CFR 18.36(d). In a memorandum to the FHWA Regional Administrators, dated June 26, 1996, the Director of the FHWA Office of Engineering raised the threshold from $25,000 to $100,000. This memo was issued to implement the change in the final rule, published on April 19, 1995 (60 FR 19646), concerning 49 CFR part 18 and the change to 41 U.S.C. 403(11), which defines the ''simplified acquisition threshold'' to mean $100,000.

Section 172.9 Compensation

The information in paragraph (a) of this section is transferred to a new paragraph (a) in § 172.7, Audits, and revised to prohibit procedures enacted into State law after June 9, 1998. Paragraphs (b), (c), and (d) are removed.

Section 172.11 Contract Modification

This section is removed to promote uniformity with the common grant rule found in 49 CFR part 18.

Section 172.13 Monitoring the Contract Work

This section is removed to promote uniformity with the common grant rule found in 49 CFR part 18. The requirements of this section are covered by 49 CFR 18.36 which generally involve State procedures.

Section 172.15 Alternate Procedures

This section is removed because it implemented 23 U.S.C. 117, Certification Acceptance, which was repealed by section 1601 of the TEA–21 in 1998.

Sections 172.21, 172.23, and 172.25 of Subpart B

Subpart B, Private sector involvement program, is removed. This section was developed to meet the requirements of the Intermodel Surface Transportation Efficiency Act of 1991 (ISTEA), Public law 102–240, 105 Stat. 1914, section 1060, Private sector involvement program, but it has never been funded.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This action will not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking amends current regulations governing the administration of engineering and design related service contracts based on changes in the law. The FHWA does not anticipate that these changes will affect the total Federal funding available under the engineering and design related services contracts. Consequently, the economic impact of this rulemaking is minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the anticipated effects of this rule on small entities, such as local governments and businesses. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Essentially, this rulemaking implements certain changes in 23 U.S.C. 112, as mandated by recent laws. This rulemaking eliminates sections that were removed by the recent laws (NHS Act and TEA–21) and other sections that were not required by law or that were outdated. Thus, the impact upon the small entities affected is negligible because the FHWA is merely updating, simplifying, and clarifying existing procedures.

Unfunded Mandates Reform Act of 1995

This final rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action

does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action 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 concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes it will not have substantial direct effects on one or more tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This rule primarily involves U.S. Department of Transportation grant funds to State, county and city Department of Transportation agencies for the construction and maintenance of highways. Therefore, this final rule will not have a substantial direct impact on one or more Indian tribes and a tribal summary impact statement is not required.

Executive Order 13211 (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 a not 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 172

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: June 5, 2002

Mary E. Peters

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA revises part 172 of title 23, Code of Federal Regulations, to read as set forth below:

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

Sec.

172.1 Purpose and applicability.
172.3 Definitions.
172.5 Methods of procurement.
172.7 Audits.
172.9 Approvals.

Authority: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C. 541 *et seq.*; sec.1205(a), Pub. L. 105–178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104–59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102–240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

§ 172.1 Purpose and applicability.

This part prescribes policies and procedures for the administration of engineering and design related service contracts under 23 U.S.C. 112 as supplemented by the common grant rule, 49 CFR part 18. It is not the intent of this part to release the grantee from the requirements of the common grant rule. The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. Recipients of Federal funds shall ensure that their subrecipients comply with this part.

§ 172.3 Definitions.

As used in this part:

Audit means a review to test the contractor's compliance with the requirements of the cost principles contained in 48 CFR part 31.

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the requirements of the cost principles contained in 48 CFR part 31.

Competitive negotiation means any form of negotiation that utilizes the following:

(1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services Act of 1949 (Public Law 92–582, 86 Stat. 1278 (1972));

(2) Equivalent State qualifications-based procedures; or

(3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105–178 (TEA–21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design related services.

Engineering and design related services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

One-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared for the consultant.

§ 172.5 Methods of procurement.

(a) *Procurement.* The procurement of Federal-aid highway contracts for engineering and design related services shall be evaluated and ranked by the contracting agency using one of the following procedures:

(1) *Competitive negotiation.* Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Price shall not be used as a factor in the analysis and selection phase. Alternatively, a formal procedure adopted by State Statute enacted into law prior to June 9, 1998 is also permitted under paragraph (a)(4) of this section.

(2) *Small purchases.* Small purchase procedures are those relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11). Contract requirements should not be broken down into smaller components merely to permit the use of small purchase requirements. States and subrecipients of States may use the State's small purchase procedures for the procurement of engineering and design related services provided the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11).

(3) *Noncompetitive negotiation.* Noncompetitive negotiation may be used to procure engineering and design related services on Federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation, equivalent State qualifications-based procedures, or small purchase procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The service is available only from a single source;

(ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(iii) After solicitation of a number of sources, competition is determined to be inadequate.

(4) *State statutory procedures.* Contracting agencies may procure engineering and design related services using an alternate selection procedure established in State statute enacted into law before June 9, 1998.

(b) *Disadvantaged Business Enterprise (DBE) program.* The contracting agency shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26.

(c) *Compensation.* The cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used.

§ 172.7 Audits.

(a) *Performance of audits.* When State procedures call for audits of contracts or subcontracts for engineering design services, the audit shall be performed to test compliance with the requirements of the cost principles contained in 48 CFR part 31. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(b) *Audits for indirect cost rate.* Contracting agencies shall use the indirect cost rate established by a cognizant agency audit for the cost principles contained in 48 CFR part 31 for the consultant, if such rates are not under dispute. A lower indirect cost rate may be used if submitted by the consultant firm, however the consultant's offer of a lower indirect cost rate shall not be a condition of contract award. The contracting agencies shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings. The consultant's indirect cost rates for its one-year applicable accounting period shall be applied to the contract, however once an indirect cost rate is established for a contract it may be extended beyond the one year applicable accounting period provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition of contract award. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(c) *Disputed audits.* If the indirect cost rate(s) as established by the cognizant audit in paragraph (b) of this section are in dispute, the parties of any proposed new contract must negotiate a provisional indirect cost rate or perform an independent audit to establish a rate for the specific contract. Only the consultant and the parties involved in performing the indirect cost audit may dispute the established indirect cost rate. If an error is discovered in the established indirect cost rate, the rate may be disputed by any prospective user.

(d) *Prenotification; confidentiality of data.* The FHWA and recipients and subrecipients of Federal-aid highway funds may share the audit information in complying with the State or subrecpient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the State or subrecpient's acceptance of a consultant's overhead rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance, however should a release be required by law or court order, such release shall make note of the confidential nature of the data.

§ 172.9 Approvals.

(a) *Written procedures.* The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These written procedures and all revisions shall be approved by the FHWA for recipients of federal funds. Recipients shall approve the written procedures and all revisions for their subrecipients. These procedures shall, as appropriate to the particular method of procurement, cover the following steps:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant;

(2) In soliciting proposals from prospective consultants;

(3) In the evaluation of proposals and the ranking/selection of a consultant;

(4) In negotiation of the reimbursement to be paid to the selected consultant;

(5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed; and

(6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.

(b) *Contracts.* Contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c), that do not fall under the small purchase procedures in § 172.5(a)(2), shall be subject to the prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.

(c) *Major projects.* Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.

(d) *Consultant services in management roles.* When Federal-aid highway funds participate in the contract, the contracting agency shall receive approval from the FHWA before hiring a consultant to act in a management role for the contracting agency.

[FR Doc. 02–14751 Filed 6–11–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8999]

RIN 1545–AY13

Treaty Guidance Regarding Payments With Respect to Domestic Reverse Hybrid Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 894 relating to the eligibility for treaty benefits of items of income paid by domestic entities that are not fiscally transparent under U.S. law but are fiscally transparent under the laws of the jurisdiction of the person claiming treaty benefits (domestic reverse hybrid entities). The regulations affect the determination of tax treaty benefits with respect to U.S. source income of foreign persons.

DATES: *Effective Date:* These regulations are effective June 12, 2002.

Applicability Date: These regulations are applicable to items of income paid by a domestic reverse hybrid entity on or after June 12, 2002 with respect to amounts received by the domestic reverse hybrid entity on or after June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, the IRS and Treasury published a notice of proposed rulemaking (REG–107101–00) in the **Federal Register** (66 FR 12445) under section 894 relating to whether payments made by domestic reverse hybrid entities to their interest holders are eligible for benefits under income tax treaties. A limited number of comments responding to the notice of proposed rulemaking were received. After consideration of these comments, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

Explanation of Provisions

I. General

These final section 894 regulations clarify the availability of treaty benefits on payments made by a domestic reverse hybrid entity (DRH) to its interest holders. A DRH is a U.S. entity that the United States treats as non-fiscally transparent (e.g., as a corporation), but the interest holder's country treats as fiscally transparent (e.g., as a partnership or branch). These regulations are the final piece of guidance associated with section 894 regulations finalized on July 3, 2000 (TD 8889; 65 FR 40993) (the ''2000 regulations''), that generally address the availability of treaty benefits on items of U.S. source income paid to hybrid entities (i.e., entities treated as fiscally transparent by one jurisdiction but non-fiscally transparent by another).

The preamble to the 2000 regulations noted that the IRS and Treasury had learned that non-U.S. multinationals were establishing DRH structures in the United States to manipulate the U.S. tax treaty network to obtain tax-advantaged financing. The IRS and Treasury notified the public in that preamble that they intended to issue regulations to address this situation.

Proposed regulations were issued on February 27, 2001. The proposed regulations provided guidance with respect to two distinct issues involving domestic reverse hybrid entities. First, to resolve a technical question raised by commentators regarding the application of the 2000 regulations, the proposed regulations clarified that a payment by a domestic reverse hybrid entity to a foreign interest holder may be eligible for treaty benefits. No comments were received on this portion of the proposed regulations, and the rule in the proposed regulations is accordingly adopted without change in these final regulations.

The proposed regulations also addressed certain structures involving domestic reverse hybrid entities that Treasury and the IRS believed represented the use of such entities to obtain inappropriate treaty benefits. The comments received in response to this portion of the proposed regulations generally confirmed the need for regulations to address the use of DRH structures by non-U.S. companies. One commentator wrote in its comment that ''regulations addressing the DRH structure are appropriate.'' The commentator noted that DRH structures are ''relatively uncommon'' with the exception of their use by highly sophisticated non-U.S. multinational groups to procure acquisition financing at a tax-advantaged rate vis-a-vis their U.S. competitors.

Several commentators expressed concern that the approach taken in the proposed DRH regulations might erode the simplicity achieved by the section 7701 entity classification rules, known as the Check-the-Box (CTB) regulations. The IRS and Treasury have carefully considered this comment, but continue to believe that the approach in these final regulations is appropriate. The regulations only apply to a DRH structure established by a group of taxpayers related to each other by 80% common ownership. This high ownership requirement minimizes the possibility that a taxpayer might inadvertently establish such a structure. In addition, the comments confirm that DRH structures remain ''relatively uncommon.'' Thus, any loss of the simplification benefits of the CTB regulations also will be relatively uncommon.

One commentator suggested that, rather than adopt the approach in the regulations, the IRS and Treasury should pursue an approach under section 1503(d) to directly address structures similar to, and potentially including, the DRH that rely on hybrid entity structures to deduct the same

interest expense in two jurisdictions (commonly called a ''double dip'' of interest deductions) to achieve tax-advantaged financing. The commentator expressed the view that the real concern of the IRS and Treasury should be this double dip on deductions, rather than the tax treaty manipulation present in DRH structures.

Treasury and the IRS agree that a re-examination of the rules of section 1503(d) and the policies underlying those rules may be appropriate. Such a re-examination will require substantial and careful analysis with respect to the interaction of U.S. and foreign law in a variety of contexts and is therefore beyond the scope of these regulations, which, as noted above, focus on the use of DRH structures to obtain inappropriate treaty benefits.

In this regard, the commentator misconstrues the concern of the IRS and Treasury with respect to the issues associated with the use of DRH structures. Treasury and the IRS are concerned that DRH structures are being established by related parties to manipulate differences in U.S. and foreign entity classification rules to reduce, through inappropriate use of an income tax treaty, the amount of tax imposed on items of income paid by domestic corporations to related foreign companies. The overall effect of these transactions, if respected, would be (1) a deduction under U.S. law for the ''outbound'' payment of an item of income, (2) the reduction or elimination of U.S. withholding tax on that item of income under an applicable treaty, and (3) the imposition of little or no tax by the treaty partner on the item of income. This result is inconsistent with the expectation of the United States and its treaty partners that treaties should be used to reduce or eliminate double taxation of income. The legislative history of section 894(c) supports this analysis. Congress specifically expressed its concern about the use of income tax treaties to manipulate the inconsistencies between U.S. and foreign tax laws to obtain similar benefits. See H.R. Conf. Rep. No 220, 105th Cong., 1st Sess. 573 (1997); Joint Committee on Taxation, 105th Cong., 1st Sess., General Explanation of Tax Legislation Enacted in 1997 (JCS–23–97), at 249 (December 17, 1997). The approach adopted by these regulations also is consistent with the U.S. view that contracting states to an income tax treaty may adopt provisions in their domestic laws to prevent inappropriate use of the treaty. See, *e.g.,* the Treasury Department Technical Explanation to Article 22 (Limitation on Benefits) of the 1996 United States Model Income Tax Convention. See also Commentaries to Article 1 of the 2000 OECD Model Tax Convention on Income and Capital; S. Rep. No. 445, 100th Cong. 2d Sess. 322–23 (1988).

Another commentator questioned Treasury's authority for issuing the regulations, arguing that the recharacterization of an interest payment as a dividend payment may contravene the definition of interest contained in various U.S. treaties. The IRS and Treasury have concluded that the regulations are consistent with U.S. law, including U.S. treaties. These final regulations are issued under the authority of sections 894(a), 894(c), 7805 and 7701(l). Further, as noted above, contracting states to an income tax treaty may adopt provisions in their domestic laws to counter inappropriate uses of the treaty. Id.

II. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(1): Payment Made to Related Foreign Interest Holder

Section 1.894–1(d)(2)(ii)(B)(*1*) of the proposed regulations provided a special rule that was generally targeted at payments made by a domestic reverse hybrid entity to a foreign parent of the domestic reverse hybrid entity. This rule would apply if: (1) A domestic subsidiary made a payment to a domestic reverse hybrid entity, the payment was considered to be a dividend either under the laws of the United States or under the laws of the jurisdiction of the foreign parent of the domestic reverse hybrid entity, and the domestic reverse hybrid entity was treated as a fiscally transparent, or ''pass-through,'' entity under the foreign parent's laws; and (2) the domestic reverse hybrid entity made a deductible payment to the foreign parent that otherwise would qualify for a treaty-based reduction in U.S. withholding tax. Under these circumstances, the proposed regulations provided that the payment by the domestic reverse hybrid entity would be treated as a dividend for all purposes of the Internal Revenue Code and the applicable income tax treaty, but only to the extent of the foreign parent's proportionate share of the prior dividend payments made to the domestic reverse hybrid entity by the domestic subsidiary.

Commentators recommended the inclusion of a tax avoidance purpose test in the final regulations. As part of this approach, commentators suggested consideration of several factors, including the ability of the domestic reverse hybrid entity to satisfy the debt independent of dividends or payments from the domestic entity, and the amount of time between the time the related foreign interest holder, the domestic reverse hybrid entity, and the domestic entity became related persons and the incurrence of the inter-company debt. This recommendation was not adopted. These regulations are intended to provide objective rules regarding eligibility for treaty benefits on certain items of U.S. source income paid by domestic reverse hybrid entities.

Commentators requested clarification that paragraph (d)(2)(ii)(B) does not apply to payments made by a domestic reverse hybrid entity that would not be subject to withholding tax without regard to a treaty. Commentators are correct in reading the regulations to provide that paragraph (d)(2)(ii)(B) will not apply if the payment made by the domestic reverse hybrid entity is exempt from withholding tax under the Internal Revenue Code. Commentators also requested clarification that the regulations apply only to payments received by the domestic reverse hybrid entity while it is related to both the domestic entity and the related foreign interest holder, and to payments made by the domestic reverse hybrid entity while it is related to the related foreign interest holder. The text of these regulations also confirms this result. Accordingly, no changes to the regulations were considered necessary on either of these points.

As a general matter, commentators questioned whether paragraph (d)(2)(ii)(B)(*1*) of the regulations applies to a situation in which the dividend withholding rate under the applicable income tax treaty is lower than the withholding rate for interest under the treaty. The regulations do not make the recharacterization of the deductible payment dependent on the withholding rates in the applicable income tax treaty. Therefore, if the requirements of the regulations are met, the regulations will apply regardless of whether the dividend withholding rate is higher than the withholding rate for interest or other deductible payments in the applicable income tax treaty. An example to this effect has been added to the final regulations.

III. Comments and Changes to § 1.894–1(d)(2)(ii)(B)(3): Definition of Related

Paragraph (d)(2)(ii)(B)(*3*) of the proposed regulations defined the term *related* for purposes of determining whether a domestic entity made a dividend payment to a related domestic reverse hybrid entity, and for purposes of determining whether a domestic reverse hybrid entity made a payment to a related foreign interest holder. The ownership requirements set forth in section 267(b) or 707(b)(1), the

constructive ownership rules of sections 318, and attribution rules of section 267(c) were used solely to determine whether an entity was ''related'' for purposes of paragraph (d)(2)(ii)(B); and not to determine if the entity was an interest holder.

Commentators consequently have questioned whether corporations that do not own any stock directly in the domestic reverse hybrid entity, but are related to the domestic reverse hybrid entity within the meaning of paragraph (d)(2)(ii)(B)(*3*), can be interest holders, and, therefore, related foreign interest holders for purposes of paragraph (d)(2)(ii)(B). For example, commentators questioned whether the regulations apply if a domestic reverse hybrid entity, which has received a dividend payment from a related domestic entity, makes an interest payment to a foreign sister corporation of the domestic reverse hybrid entity which is not itself a shareholder in the domestic reverse hybrid entity. Commentators believe that the application of the regulations to a foreign sister corporation should depend on whether that corporation is part of a ''consolidated group'' under the laws of the jurisdiction of the foreign parent.

The IRS and Treasury generally agree with this position. Paragraph (d)(2)(ii)(B)(*ii*) of the final regulations provides that a payment to a person, wherever organized, the income and losses of which are available, under the laws of the jurisdiction of the related foreign interest holder, to offset the income and losses of a related foreign interest holder, will be treated as a payment to a related foreign interest holder, and the regulations will apply. Examples have been added to the final regulations illustrating these principles.

Paragraph (d)(2)(ii)(B)(*3*) of the proposed regulations also contained a special rule that would treat certain accommodation parties as related foreign interest holders. Pursuant to the rule in the proposed regulations, if a person entered into a transaction with a domestic reverse hybrid entity, its related interest holder, or other related entity, and the effect of the transaction was to avoid the principles of these regulations, then that person would be treated as related to the domestic reverse hybrid entity for purposes of this section. Commentators expressed concern that this language could encompass legitimate dealings with unrelated third parties. For example, an unrelated foreign bank that makes a loan to a domestic reverse hybrid entity and receives interest payments under the loan could be treated as related to the domestic reverse hybrid entity under paragraph (d)(2)(ii)(B)(*3*). In recognition of the fact that the special rule in paragraph (d)(2)(ii)(B)(*3*) was potentially overbroad and created uncertainty as to its application, the rule was deleted.

IV. Comments and Changes to § 1.894–1(d)(2)(ii)(C): Commissioner's discretion.

Paragraph (d)(2)(ii)(C) of the proposed regulations provided the Commissioner with the authority to recharacterize, for all purposes of the Internal Revenue Code, all or part of any transaction (or series of transactions) between related parties if the effect of the transaction was to avoid the principles of paragraph (d)(2)(ii)(B). Commentators also questioned the scope of this provision and requested the inclusion of examples of situations in which the Commissioner would not exercise his discretion and situations in which the Commissioner may exercise his discretion. Commentators were concerned that this provision would allow the Commissioner to apply the regulations to legitimate, non-abusive transactions involving domestic reverse hybrid entities.

In response to these comments, and in recognition of the potentially overbroad reach of the proposed provision, paragraph (d)(2)(ii)(C) has been modified in the final regulations to narrow its scope and clarify the circumstances under which the provision will apply. Thus, under paragraph (d)(2)(ii)(C)(*1*) of the final regulations (which applies to transactions involving related parties), the Commissioner has authority to recharacterize a transaction only if the following conditions are met: (1) A deductible payment is made to a person who is related, as that term is defined in paragraph (d)(2)(ii)(B)(*3*), to the domestic reverse hybrid entity (but is not otherwise described in paragraph (d)(2)(ii)(B)(*1*)(*ii*)); and (2) that payment is made in connection with one or more transactions the effect of which is to avoid the application of paragraph (d)(2)(ii)(B). If paragraph (d)(2)(ii)(C)(*1*) applies, the Commissioner is authorized to treat the deductible payment as if it were received directly by the related foreign interest holder in the domestic reverse hybrid entity.

In addition, paragraph (d)(2)(ii)(C)(*2*) of the final regulations (which applies to transactions involving an unrelated ''middleman'') provides that the Commissioner may treat a deductible payment made by a domestic reverse hybrid entity to an unrelated person as being made directly to a related foreign interest holder if: (1) The unrelated person (or other person (whether related or not) which receives a payment in a series of transactions that includes a transaction involving such unrelated person) makes a payment to the related foreign interest holder (or other person described in paragraph (d)(2)(ii)(B)(*1*)(*ii*)); (2) the payment to the unrelated person and the payment to the related foreign interest holder are made in connection with a series of transactions which constitute a financing arrangement, as defined in § 1.881–3(a)(2)(i); and (3) the transactions have the effect of avoiding the application of paragraph (d)(2)(ii)(B) of this section. An example has been added to illustrate the principles contained in this revised paragraph (d)(2)(ii)(C)(*2*).

To the extent the Commissioner recharacterizes a deductible payment as a distribution within the meaning of section 301(a) under this paragraph (d)(2)(ii)(C), the payment will be treated as such for all purposes of the Internal Revenue Code and the applicable income tax treaty.

Special Analysis

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

Drafting Information

The principal author of these regulations is Karen A. Rennie-Quarrie of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.894–1, paragraphs (d)(2)(ii), and (d)(2)(iii) are added and paragraph (d)(6) is revised to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(d) * * *

(2) * * *

(ii) *Payments by domestic reverse hybrid entities—(A) General rule.* Except as otherwise provided in paragraph (d)(2)(ii)(B) of this section, an item of income paid by a domestic reverse hybrid entity to an interest holder in such entity shall have the character of such item of income under U.S. law and shall be considered to be derived by the interest holder, provided the interest holder is not fiscally transparent in its jurisdiction, as defined in paragraph (d)(3)(iii) of this section, with respect to the item of income. In determining whether the interest holder is fiscally transparent with respect to the item of income under this paragraph (d)(2)(ii)(A), the determination under paragraph (d)(3)(ii) of this section shall be made based on the treatment that would have resulted had the item of income been paid by an entity that is not fiscally transparent under the laws of the interest holder's jurisdiction with respect to any item of income.

(B) *Payment made to related foreign interest holder—(1) General rule.* If—

(*i*) A domestic entity makes a payment to a related domestic reverse hybrid entity that is treated as a dividend under either the laws of the United States or the laws of the jurisdiction of a related foreign interest holder in the domestic reverse hybrid entity, and under the laws of the jurisdiction of the related foreign interest holder in the domestic reverse hybrid entity, the related foreign interest holder is treated as deriving its proportionate share of the payment under the principles of paragraph (d)(1) of this section; and

(*ii*) The domestic reverse hybrid entity makes a payment of a type that is deductible for U.S. tax purposes to the related foreign interest holder or to a person, wherever organized, the income and losses of which are available, under the laws of the jurisdiction of the related foreign interest holder, to offset the income and losses of the related foreign interest holder, and for which a reduction in U.S. withholding tax would be allowed under an applicable income tax treaty; then

(*iii*) To the extent the amount of the payment described in paragraph (d)(2)(ii)(B)(*1*)(*ii*) of this section does not exceed the sum of the portion of the payment described in paragraph (d)(2)(ii)(B)(*1*)(*i*) of this section treated as derived by the related foreign interest holder and the portion of any other prior payments described in paragraph (d)(2)(ii)(B)(*1*)(*i*) of this section treated as derived by the related foreign interest holder, the amount of the payment described in (d)(2)(ii)(B)(*1*)(*ii*) of this section will be treated for all purposes of the Internal Revenue Code and any applicable income tax treaty as a distribution within the meaning of section 301(a) of the Internal Revenue Code, and the tax to be withheld from the payment described in paragraph (d)(2)(ii)(B)(*1*)(*ii*) of this section (assuming the payment is a dividend under section 301(c)(1) of the Internal Revenue Code) shall be determined based on the appropriate rate of withholding that would be applicable to dividends paid from the domestic reverse hybrid entity to the related foreign interest holder in accordance with the principles of paragraph (d)(2)(ii)(A) of this section.

(2) Determining amount to be recharacterized under paragraph (d)(2)(ii)(B)(1)(iii). For purposes of determining the amount to be recharacterized under paragraph (d)(2)(ii)(B)(*1*)(*iii*) of this section, the portion of the payment described in paragraph (d)(2)(ii)(B)(*1*)(*i*) of this section treated as derived by the related foreign interest holder shall be increased by the portion of the payment derived by any other person described in paragraph (d)(2)(ii)(B)(*1*)(*ii*), and shall be reduced by the amount of any prior section 301(c) distributions made by the domestic reverse hybrid entity to the related foreign interest holder or any other person described in paragraph (d)(2)(ii)(B)(*1*)(*ii*) and by the amount of any payments from the domestic reverse hybrid entity previously recharacterized under paragraph (d)(2)(ii)(B)(*1*)(*iii*) of this section.

(3) Tiered entities. The principles of this paragraph (d)(2)(ii)(B) also shall apply to payments referred to in this paragraph (d)(2)(ii)(B) made among related entities when there is more than one domestic reverse hybrid entity or other fiscally transparent entity involved.

(4) Definition of related. For purposes of this section, a person shall be treated as related to a domestic reverse hybrid entity if it is related by reason of the ownership requirements of section 267(b) or 707(b)(1), except that the language ''at least 80 percent'' applies instead of ''more than 50 percent,'' where applicable. For purposes of determining whether a person is related by reason of the ownership requirements of section 267(b) or 707(b)(1), the constructive ownership rules of section 318 shall apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership.

(C) *Payments to persons not described in paragraph (d)(2)(ii)(B)(1)(ii)—(1) Related persons.* The Commissioner may treat a payment by a domestic reverse hybrid entity to a related person (who is neither the related foreign interest holder nor otherwise described in paragraph (d)(2)(ii)(B)(*1*)(*ii*) of this section), in whole or in part, as being made to a related foreign interest holder for purposes of applying paragraph (d)(2)(ii)(B) of this section, if—

(i) The payment to the related person is of a type that is deductible by the domestic reverse hybrid entity; and

(*ii*) The payment is made in connection with one or more transactions the effect of which is to avoid the application of paragraph (d)(2)(ii)(B) of this section.

(*2*) *Unrelated persons.* The Commissioner may treat a payment by a domestic reverse hybrid entity to an unrelated person, in whole or in part, as being made to a related foreign interest holder for purposes of applying paragraph (d)(2)(ii)(B) of this section, if—

(*i*) The payment to the unrelated person is of a type that is deductible by the domestic reverse hybrid entity;

(*ii*) The unrelated person (or other person (whether related or not) which receives a payment in a series of transactions that includes a transaction involving such unrelated person) makes a payment to the related foreign interest holder (or other person described in paragraph (d)(2)(ii)(B)(*1*)(*ii*));

(*iii*) The foregoing payments are made in connection with a series of transactions which constitute a financing arrangement, as defined in § 1.881–3(a)(2)(i); and

(*iv*) The transactions have the effect of avoiding the application of paragraph (d)(2)(ii)(B) of this section.

(iii) *Examples.* The rules of this paragraph (d)(2) are illustrated by the following examples:

Example 1. Dividend paid by unrelated entity to domestic reverse hybrid entity. (i) *Facts.* Entity A is a domestic reverse hybrid entity, as defined in paragraph (d)(2)(i) of this section, with respect to the U.S. source dividends it receives from B, a domestic corporation to which A is not related within the meaning of paragraph (d)(2)(ii)(B)(*4*) of

this section. A's 85-percent shareholder, FC, is a corporation organized under the laws of Country X, which has an income tax treaty in effect with the United States. A's remaining 15-percent shareholder is an unrelated domestic corporation. Under Country X law, FC is not fiscally transparent with respect to the dividend, as defined in paragraph (d)(3)(ii) of this section. In year 1, A receives $100 of dividend income from B. Under Country X law, FC is treated as deriving $85 of the $100 dividend payment received by A. The applicable rate of tax on dividends under the U.S.-Country X income tax treaty is 5 percent with respect to a 10-percent or more corporate shareholder.

(ii) *Analysis.* Under paragraph (d)(2)(i) of this section, the U.S.-Country X income tax treaty does not apply to the dividend income received by A because the payment is made by B, a domestic corporation, to A, another domestic corporation. A remains fully taxable under the U.S. tax laws as a domestic corporation with regard to that item of income. Further, pursuant to paragraph (d)(2)(i) of this section, notwithstanding the fact that A is treated as fiscally transparent with respect to the dividend income under the laws of Country X, FC may not claim a reduced rate of taxation on its share of the U.S. source dividend income received by A.

Example 2. Interest paid by domestic reverse hybrid entity to related foreign interest holder where dividend is paid by unrelated entity. (i) *Facts.* The facts are the same as in *Example 1.* Both the United States and Country X characterize the payment by B in year 1 as a dividend. In addition, in year 2, A makes a payment of $25 to FC that is characterized under the Internal Revenue Code as interest on a loan from FC to A. Under the U.S.-Country X income tax treaty, the rate of tax on interest is zero. Under Country X laws, had the interest been paid by an entity that is not fiscally transparent under Country X's laws with respect to any item of income, FC would not be fiscally transparent as defined in paragraph (d)(2)(ii) of this section with respect to the interest.

(ii) *Analysis.* The analysis is the same as in Example 1 with respect to the $100 payment from B to A. With respect to the $25 payment from A to FC, paragraph (d)(2)(ii)(B) of this section will not apply because, although FC is a related foreign interest holder in A, A is not related to B, the payor of the dividend income it received. Under paragraph (d)(2)(ii)(A) of this section, the $25 of interest paid by A to FC in year 2 is characterized under U.S. law as interest. Accordingly, in year 2, A is entitled to an interest deduction with respect to the $25 interest payment from A to FC, and FC is entitled to the reduced rate of withholding applicable to interest under the U.S.-Country X income tax treaty, assuming all other requirements for claiming treaty benefits are met.

Example 3. Interest paid by domestic reverse hybrid entity to related foreign interest holder where dividend is paid by a related entity. (i) *Facts.* The facts are the same as in Example 2, except the $100 dividend income received by A in year 1 is from A's wholly-owned subsidiary, S.

(ii) *Analysis.* The analysis is the same as in Example 1 with respect to the $100 dividend payment from S to A. However, the $25 interest payment in year 2 by A to FC will be treated as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty because $25 does not exceed FC's share of the $100 dividend payment made by S to A ($85). Since FC is not fiscally transparent with respect to the payment as determined under paragraph (d)(2)(ii)(A) of this section, FC is entitled to the reduced rate applicable to dividends under the U.S.-Country X income tax treaty with respect to the $25 payment. Because the $25 payment in year 2 is recharacterized as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty, A is not entitled to an interest deduction with respect to that payment and FC is not entitled to claim the reduced rate of withholding applicable to interest.

Example 4. Definition of related foreign interest holder. (i) *Facts.* The facts are the same as in *Example 3,* except that A has two 50-percent shareholders, FC1 and FC2. In year 2, A makes an interest payment of $25 to both FC1 and FC2. FC1 is a corporation organized under the laws of Country X, which has an income tax treaty in effect with the United States. FC2 is a corporation organized under the laws of Country Y, which also has an income tax treaty in effect with the United States. FP owns 100-percent of both FC1 and FC2, and is organized under the laws of Country X. Under Country X law, FC1 is not fiscally transparent with respect to the dividend, as defined in paragraph (d)(3)(ii) of this section. Under Country X law, FC1 is treated as deriving $50 of the $100 dividend payment received by A because A is fiscally transparent under the laws of Country X, as determined under paragraph (d)(3)(iii) of this section. The applicable rate of tax on dividends under the U.S.-Country X income tax treaty is 5-percent with respect to a 10-percent or more corporate shareholder. Under Country Y law, FC2 is not treated as deriving any of the $100 dividend payment received by A because, under the laws of Country Y, A is not a fiscally transparent entity.

(ii) *Analysis.* The analysis is the same as in *Example 1* with respect to the $100 dividend payment from S to A. With respect to the $25 payment in year 2 by A to FC1, the payment will be treated as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty because FC1 is a related foreign interest holder as determined under paragraph (d)(2)(ii)(B)(*4*) of this section, and because $25 does not exceed FC1's share of the dividend payment made by S to A ($50). FC1 is a related foreign interest holder because FC1 is treated as owning the stock of A owned by FC2 under section 267(b)(3). Since FC1 is not fiscally transparent with respect to the payment as determined under paragraph (d)(2)(ii)(A) of this section, FC1 is entitled to the 5-percent reduced rate applicable to dividends under the U.S.-Country X income tax treaty with respect to the $25 payment. Because the $25 payment in year 2 is recharacterized as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty, A is not entitled to an interest deduction with respect to that payment. Even though FC2 is also a related foreign interest holder, the $25 interest payment by A to FC2 in year 2 is not recharacterized because A is not fiscally transparent under the laws of Country Y, and FC2 is not treated as deriving any of the $100 dividend payment received by A. Thus, the U.S.-Country Y income tax treaty is not implicated.

Example 5. Higher treaty withholding rate on dividends. (i) *Facts.* The facts are the same as in *Example 3,* except that under the U.S.-Country X income tax treaty, the rate of tax on interest is 10-percent and the rate of tax on dividends is 5-percent.

(ii) *Analysis.* The analysis is the same as in *Example 1* with respect to the $100 dividend payment from S to A. The analysis is the same as in *Example 3* with respect to the $25 interest payment in year 2 from A to FC.

Example 6. Foreign sister corporation the income and losses of which may offset the income and losses of related foreign interest holder. (i) *Facts.* The facts are the same as *Example 3,* except that in year 2, A makes the interest payment of $25 to FS, a subsidiary of FC also organized in Country X. Under the laws of Country X, FS is not fiscally transparent with respect to the interest payment, and the income and losses of FS may be used to offset the income and losses of FC.

(ii) *Analysis.* The analysis is the same as in *Example 1* with respect to the $100 dividend payment from S to A. With respect to the $25 interest payment from A to FS in year 2, FS is a person described in paragraph (d)(2)(ii)(B)(*1*)(ii) of this section because the income and losses of FS may be used under the laws of Country X to offset the income and losses of FC, the related foreign interest holder that derived its proportionate share of the payment from S to A. Therefore, paragraph (d)(2)(ii)(B) of this section applies, and the $25 interest payment in year 2 by A to FS is treated as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty because the $25 payment does not exceed FC's share of the $100 dividend payment made by S to A ($85). Since FS is not fiscally transparent with respect to the payment as determined under paragraph (d)(2)(ii)(A) of this section, FS is entitled to obtain the rate applicable to dividends under the U.S.-Country X income tax treaty with respect to the $25 payment. Because the $25 payment in year 2 is recharacterized as a dividend for all purposes of the Internal Revenue Code and the U.S.-Country X income tax treaty, A is not entitled to an interest deduction with respect to the payment and FS is not entitled to claim the reduced rate of withholding applicable to interest under the U.S.-Country X income tax treaty.

Example 7. Interest paid by domestic reverse hybrid entity to unrelated foreign bank. (i) *Facts.* The facts are the same as in *Example 3,* except that in year 2, A makes the interest payment of $25 to FB, a Country Y unrelated foreign bank, on a loan from FB to A.

(ii) *Analysis.* The analysis is the same as in *Example 1* with respect to the $100

dividend payment from S to A. With respect to the payment from A to FB, paragraph (d)(2)(ii)(B) of this section will not apply because, although A is related to S, the payor of the dividend income it received, A is not related to FB under paragraph (d)(2)(ii)(B)(*4*) of this section. Under paragraph (d)(2)(ii)(A) of this section, the $25 interest payment made from A to FB in year 2 is characterized as interest under the Internal Revenue Code.

Example 8. Interest paid by domestic reverse hybrid to an unrelated entity pursuant to a financing arrangement. (i) *Facts.* The facts are the same as in *Example 7,* except that in year 3, FB makes an interest payment of $25 to FC on a deposit made by FC with FB.

(ii) *Analysis.* The analysis is the same as in *Example 1* with respect to the $100 dividend payment from S to A. With respect to the $25 payment from A to FB in year 2, because the payment is made in connection with a transaction that consititutes a financing arrangement within the meaning of paragraph (d)(2)(ii)(C)(*2*) of this section, the payment may be treated by the Commissioner as being made directly to FC. If the Commissioner disregards FB, then the analysis is the same as in *Example 3* with respect to the $25 interest payment in year 2 from A to FC.

Example 9. Royalty paid by related entity to domestic reverse hybrid entity. (i) *Facts.* The facts are the same as in *Example 3,* except the $100 income received by A from S in year 1 is a royalty payment under both the laws of the United States and the laws of Country X. The royalty rate under the treaty is 10 percent and the interest rate is 0 percent.

(ii) *Analysis.* The analysis as to the royalty payment from S to A is the same as in *Example 1* with respect to the $100 dividend payment from S to A. With respect to the $25 payment from A to FC, paragraph (d)(2)(ii)(B) of this section will not apply because the payment from S to A is not treated as a dividend under the Internal Revenue Code or the laws of Country X. Under paragraph (d)(2)(ii)(A) of this section, the $25 of interest paid by A to FC in year 2 is characterized as interest under the Internal Revenue Code. Accordingly, in year 2, FC may obtain the reduced rate of withholding applicable to interest under the U.S.-Country X income tax treaty, assuming all other requirements for claiming treaty benefits are met.

(6) *Effective dates.* This paragraph (d) applies to items of income paid on or after June 30, 2000, except paragraphs (d)(2)(ii) and (d)(2)(iii) of this section apply to items of income paid by a domestic reverse hybrid entity on or after June 12, 2002 with respect to amounts received by the domestic reverse hybrid entity on or after June 12, 2002.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 3, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–14506 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Pittsburgh–02–005]

RIN 2115–AA97

Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, PA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone encompassing all waters extending 200 feet from the shoreline of the left descending bank on the Ohio River, beginning from mile marker 34.6 and ending at mile marker 35.1. This security zone is necessary to protect the First Energy Nuclear Power Plant in Shippingport, Pennsylvania, from any and all subversive actions from any groups or individuals whose objective it is to cause disruption to the daily operations of the First Energy Nuclear Power Plant. Entry of persons and vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

DATES: This rule is effective June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Pittsburgh-02–005] and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA, 15222–1371, between 7:30 a.m. 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Brian Smith, Marine Safety Office Pittsburgh at (412) 644–5808 ext. 112.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 18, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled ''Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, Pennsylvania'', in the **Federal Register** (67 FR 11963). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This final rule maintains the status quo for the security zone. We received no comments on either the temporary final rule or the NPRM. Delaying its effective date would be contrary to public interest since immediate action is needed to respond to the security risks associated with nuclear power plants.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary. To immediately enhance that security, the Captain of the Port, Pittsburgh established a temporary security zone on the Ohio River in the vicinity of the First Energy Nuclear Power Plant, in Shippingport, PA. The temporary final rule was published March 4, 2002 in the **Federal Register** (67 FR 9589) and remains in effect until 8 a.m. on June 15, 2002.

Because the generalized high-level threat environment continues, the Captain of the Port, Pittsburgh has determined that there is a need for this security zone to remain in effect indefinitely. This security zone will reduce the risk of a terrorist incident in this generalized high-level threat environment. It reduces the potential of a waterborne attack on the facility, enhancing public health, safety, defense and security, at this location and surrounding areas.

The location of this security zone limits access to only the waters immediately adjacent to the facility and permits vessels to safely navigate around the facility.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no substantive changes to the provisions of the proposed rule. The words ''and vessels'' were added to paragraph (b)(2)

of the final rule to clarify that the term ''persons'' included vessels. Persons and vessels desiring entry must seek permission of the Captain of the Port Pittsburgh to transit the security zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone.

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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Brian Smith, U.S. Coast Guard Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644–5808.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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.

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

Collection of Information

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

Federalism

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 Reform Act

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 would 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 will not create an environmental risk to health or risk to safety that might 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 would 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.

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.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 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. Add § 165.820 to read as follows:

§ 165.820 Security Zone; Ohio River Mile 34.6 to 35.1, Shippingport, Pennsylvania.

(a) *Location.* The following area is a security zone: The waters of the Ohio River, extending 200 feet from the shoreline of the left descending bank beginning from mile marker 34.6 and ending at mile marker 35.1.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Pittsburgh.

(2) Persons and vessels desiring to transit the area of the security zone may contact the Captain of the Port Pittsburgh at telephone number 412–644–5808 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Pittsburgh or his designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: June 3, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 02–14686 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

New Specifications for Automated Flats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Automated Flat Sorting Machine (AFSM) 100 represents the next step into the automated processing environment envisioned for flat-size mail (''flats''). Mailpieces that currently qualify for automation rates for flats under Flat Sorting Machine (FSM) 881 standards (*Domestic Mail Manual* C820.2.0) will be eligible for the automation rates, provided that the pieces meet the physical criteria for processing on the AFSM 100 and other applicable preparation requirements.

EFFECTIVE DATE: This final rule is effective at 12:01 a.m. on June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Karen A. Magazino, 703–292–3644.

SUPPLEMENTARY INFORMATION: On April 17, 2002, the Postal Service published for public comment in the **Federal Register** a proposed rule (67 FR 18842) that provided information on the implementation of automation rates for pieces prepared as automation flats that meet the physical mailpiece requirements for the AFSM 100. The revised *Domestic Mail Manual* (DMM) standards published with this final rule become effective June 30, 2002.

Deployment of 534 AFSM 100s has been completed in major processing and distribution centers nationwide. With deployment of the AFSM 100s, the older FSM 881s are being phased out. Currently, pieces may qualify for an automation rate for flats based on the FSM 881 physical criteria defined in DMM C820. The Postal Service will replace the current FSM 881 standards, with new criteria based on the physical mailpiece requirements for the AFSM 100. Flat-size mailpieces must continue to meet the uniformity requirements in DMM C820.8.0.

Processing mail on the AFSM 100 provides tremendous savings opportunities. One of the Postal Service's objectives is to reduce processing costs by moving the processing of flats from a labor-intensive manual/mechanized environment to a more efficient automated mode. The additional machine capacity provided by AFSM 100 deployment reduces the overall amount of mail processed in manual/mechanized operations.

The processing and technological capabilities of the AFSM 100 are vastly superior to those of the FSM 881. The AFSM 100 has three automatic feeders with throughput rates capable of exceeding 17,000 pieces per hour, and 120 individual sort separations. Challenges that arise with high-speed feeders compared with manual inductions include singulation (double feeds) and acceleration (jams and stoppages).

The AFSM 100 also has optical character reader (OCR) and barcode reader (BCR) functionality. The reader first scans the inducted mailpiece in search of an address block and barcode. If a POSTNET barcode is found, the piece is sorted based on the ZIP Code information. If a POSTNET barcode is not found or cannot be read, the OCR looks for the delivery address and the piece is sorted based on the result returned by the OCR. If the address is unreadable by the OCR, a video-coding operator must key the image and the piece is then sorted to the correct bin or worked manually. The AFSM 100 does not apply (spray on) a POSTNET barcode.

To determine the range of mailpieces compatible with the AFSM 100, the Postal Service conducted controlled tests using a variety of physical mailpiece characteristics. Three mail characteristic studies were performed: a preliminary test in Baltimore, Maryland, from February 26, 2001, to March 13, 2001; a test in Denver, Colorado, from July 9, 2001, to August 1, 2001; and a study to determine maximum weight conducted in Palatine, Illinois, from February 25, 2002, to March 12, 2002.

The mailing industry assisted the Postal Service and supplied many of the mailpieces that were processed during the tests. The mailing industry's participation and coordinated efforts were crucial to the successful outcome of the tests.

The AFSM 100 preliminary test was designed with specific analytical objectives, including: (1) Identifying mailpiece characteristic ranges that would require additional data to determine automation compatibility, (2) identifying factors that would have a significant impact on sorter performance, (3) providing data that would identify threshold levels, and (4) determining mailpiece characteristics that would not require further testing. The test included the evaluation of a large number of mailpiece characteristics and a subset of combinations, each individually replicated over several test decks. The data represented jams, double feeds, miss-sorts, thickness, weight limitations, physical dimensions, mechanical rejects, and mailpiece damage. In addition, the Postal Service tested several different polywrap materials to analyze factors such as seam and wrap direction, contents, polywrap characteristics, and overhang (selvage).

The primary mail types included in the test were folded pieces (*e.g.,* tabloids), paper envelopes, bound edge pieces (*e.g.,* digest-size and perfect-bound magazines and catalogs), and a variety of pieces enclosed in polywrap. Other types of mailpieces were also included in the test, such as newspapers, self-mailers, CD/DVD disks, very thin pieces, very thick pieces, and the extremes of enveloped and folded mailpieces. Each test deck had varying characteristics including length, width, thickness, structure, polywrap, overhang (selvage), seam, and wrap direction.

This test was designed to define acceptable physical mailpiece characteristics and polywrap characteristics. The results from the pilot test in Baltimore eliminated some obvious mailpieces with specific characteristics for the second test in Denver (*e.g.,* odd-shaped envelopes and cards, pieces of non-uniform thickness, and pieces in polywrap with film-on-film coefficient of friction measuring greater than 0.5).

Mailpieces tested in Denver included most types tested in Baltimore, as well as digest-size pieces, perfect-bound and stitched magazines and catalogs, and unbound newspapers. The tabloid and digest-size pieces ranged from 8 pages to 220 pages, with cover pages of varying basis weights. Other pieces used for this test included pieces bound on the short end, pieces with special cover folds (*e.g.*, French doors, gatefolds), and pieces enclosed in 19 different types of polywrap. In addition to evaluating the polywrap characteristics, the Postal Service processed pieces to test the effects of overhang (selvage), seam, and wrap direction.

Data from these two tests have shown that the majority of the standards for physical dimensions—height, length, and thickness—developed for flats processed on the FSM 881 still apply to flats processed on the AFSM 100. On the basis of these findings, the Postal Service sets forth these dimensional requirements to qualify for AFSM 100 automation rates for flats:

- *Minimum:* 5 inches high, 6 inches long, 0.009 inch thick.
- *Maximum:* 12 inches high, 15 inches long, 0.75 inch thick.

The length and height is not determined by the orientation of the delivery address. For a piece with a bound, folded, or closed edge (*e.g.*, a newspaper, folded envelope, tabloid, or catalog), the length is the dimension parallel to the bound, folded, or closed edge. The height (vertical dimension) is the dimension perpendicular to the length. If the piece is folded more than once or is bound and then folded, the length of the piece is based on the final fold.

For a mailpiece processed on the AFSM 100, the correct and properly prepared POSTNET barcode must be placed at least ⅛ inch from any edge of the piece and must meet the appropriate barcode requirements in DMM C840.

Analysis from all three tests identified a maximum weight of 20 ounces for AFSM 100 enveloped, bound, and polywrapped flat mailpieces. This maximum will allow more Bound Printed Matter (BPM) pieces, which primarily weigh 16 ounces or more, to qualify as barcoded flats. The new rates under R2001–1 will include separate rates for BPM flats and parcels. BPM flats that meet the AFSM 100 mail characteristics and criteria will be eligible for a new barcode discount of 3 cents. Therefore, defining a ''flat'' will have significant impact on mailpiece design and rate eligibility.

The test data for polywrapped pieces led to the conclusion that the current seven polywrap standards for the FSM 881 will continue to be required for polywrapped pieces processed on the AFSM 100. A new property number 8, known as ''blocking,'' will be added. Blocking is simply the property that prevents polywrapped pieces from sticking together. Overhang (selvage) requirements will remain unchanged. Polywrapped flats for which automation rates based on AFSM 100 compatibility are claimed must be individually endorsed to show that they are automation-compatible. The endorsement ''USPS AFSM 100 Approved Poly'' must be placed on the address side of the piece, either on the flat itself or on the polywrap, preferably below the postage area or in another prominently visible location on the outside of the mailpiece. The polywrap certification process conducted by the mailpiece design analysts will remain the same as current procedures.

Three types of newspapers were tested: Broadsheet, tabloid, and quarter-fold pieces. Analysis of data collected on the processing of these newspapers resulted in the recommendation that all newspapers be prepared as quarter-folds.

The flat mail machinability tester, currently used to test FSM 881 mailpieces for rigidity, flexibility, and turning ability, will continue to be used for pieces processed on the AFSM 100. Although the performance of pieces with flimsy covers did cause some machine jams and damage to the mailpieces, sufficient data have not been collected to determine specific requirements for this type of mailpiece.

These changes will be included in both the printed and online versions of DMM Issue 57.

Part A of this document identifies and responds to the comments received on the proposed rule. Part B summarizes the changes to the DMM, followed by the text of the revised DMM standards.

A. Summary of Comments on Proposed Rule

The Postal Service received only seven comments on the April 17, 2002, proposed rule. The parties providing responses represented three industry associations, two polywrap vendors, a major mailer, and a printer.

The specific points raised in the comments are presented below, organized by general comments and by specific comments on particular issues. In addition to receiving numerous comments from the mailing industry, the Postal Service has had extensive ongoing exchanges of viewpoints with representatives of the mailing industry.

1. General Comments

Three comments were received concerning retrofitting the older FSM 1000 with similar feeder mechanisms that are currently on the new AFSM 100. One commenter asked whether the current specifications for the FSM 1000 will change because of the new feeders. Another commenter was hopeful that this change would not negatively restrict the FSM 1000 specifications or curb the eligible mail that can run on these machines. This commenter stated that it would not be desirable to make the FSM 1000s slower primarily from adding more restrictive automatic feeders that would limit which mailpieces can run on the FSM 1000. Although not part of this final rule, engineering officials for the Postal Service report that the feeder for the FSM 1000 is essentially the same feeder used on the new AFSM 100 except for the feed rate of three pieces per second rather than two pieces per second on the AFSM 100. As a consequence, there is a more rapid acceleration of the pieces on the FSM 1000, an acceleration that may require a stronger polywrap.

2. Deflection and Instructions for Flat Mail Machinability Tester

One commenter requested that the DMM continue to show the diagram of the deflection test of flat-size mail and also incorporate separate test instructions for flat-size AFSM 100 deflection standards. The Postal Service has taken this request into consideration and will continue to show the diagram in DMM C820, Exhibit 2.5. Business Mail Acceptance at USPS Headquarters will disseminate to all managers of business mail entry special instructions about the use of the flat mail machinability tester.

3. Basis Weight Test and Torn Covers

One commenter was disappointed and surprised that the Postal Service needs to conduct additional studies to determine whether basis weight for covers is critical enough to require specifications and design requirements. This commenter believed that the Postal Service's efforts to deal with cover problems by retraining employees in proper machine loading technique has served to improve the situation. This commenter also believed that modifying the AFSM 100 feeders (not studying and potentially changing mailpiece requirements) is the right approach to solving this problem. According to Postal Service Engineering, while no plans have been made for further study of basis weight at this time, a team, including publishers, is presently

analyzing existing date with the intention of providing guidelines for the construction of catalogs and magazines for optimal compatibility with postal automation.

4. Bound Printed Matter (BPM) Flats

One commenter applauded the Postal Service for providing a flats automated mailstream for BPM and that the AFSM 100 is capable of processing mailpieces weighing up to 20 ounces. Two commenters requested that the Postal Service explore further expansion of the AFSM 100 maximum weight or consider processing BPM flats weighing more than 20 ounces. One commenter expressed concern that because of the proposed weight limit, AFSM 100-compatible perfect bound flats weighing more than 20 ounces would be processed on the FSM 1000. Processing on the FSM 1000 would limit the ability to use FSM 1000s to process pieces that truly cannot be processed on the AFSM 100. According to Postal Service Engineering, more concentration is placed on jam and damage figures rather than miss-face rates. On both enveloped and perfect bound pieces the miss-face rate increases significantly as weight increases. Envelope miss-face rates increase from about 0.5% at 14 ounces to 4% at 20 ounces. Perfect bound pieces increase from about 4% at 10 ounces to 9% at 20 ounces, 13% at 24 ounces, and continue upward as weight increases. Miss-faced pieces also increase downstream processing costs because the addresses are not visible to OCRs or to video encoding staff at the next AFSM 100 handling, requiring manual sorting.

Testing of the impact on the AFSM 100 of processing heavy mailpieces on several AFSM 100s revealed numerous problems with machine performance and safety. Slippage occurred in the torque limiters when mailpiece weights were increased. This slippage causes rapid wear of the limiters and reduces the safety factor in the emergency stop process and can lead to operator injury and machine damage. Machines tested with the carousel completely loaded with heavy pieces, discharged pieces at random throughout the machines.

The Engineering Department contacted Swedish Post, which had been operating their machines at over two kilograms per three slot module (4.4 lbs. Or an average of 24 oz. per slot), and were told that they had experienced quite a few drive chain breaks and other mechanical problems, which were all traced to heavy mail being processed at the time. They have now restricted their systems to less than 1 kilogram per module (less than one pound per slot).

5. Polywrap Blocking Requirement

One commenter expressed disappointment that the new AFSM 100 specifications contain the additional property of blocking rather than a reduction in requirements. This commenter indicated that the industry had expected the AFSM 100 polywrap specifications to be similar to the FSM 1000 specifications. This commenter claimed that the Postal Service knew the industry's expectations when purchasing the AFSM 100 and that a blocking specification would impose significant costs to mailers. The Postal Service has worked with its Engineering Department on this issue and has taken this request into consideration. After several discussions with Engineering, the Postal Service will require <15 blocking factor for automatable poly. Testing results have shown that all poly films exceeding the blocking requirement produced the highest doubles rate and the worst jam rates.

6. Mailpiece Identification Statement for Polywrap

One commenter requested that the Postal Service consider an alternative to the printed endorsement identifying polywrap pieces as either FSM 881 or FSM 1000. In addition, this commenter mentioned that if the Postal Service intends to change the required FSM 881 endorsement to an AFSM 100 endorsement, the industry should be given a sufficient grace period to use up existing inventories of printed polywrap material. In the proposed rule published in the **Federal Register**, the Postal Service specifically described revising the endorsement from the FSM 881 to the AFSM 100. The Postal Service will require the mailpiece identification markings differentiating AFSM 100 from FSM 1000 polywraps for various reasons. Business mail entry employees must be able to determine whether the correct polywrap is being used to qualify mailpieces for the automation rates. The Postal Service does understand the comments received regarding polywrap in stock and supply. Therefore, a 6-month grace period will be provided. Mailers with an abundance of polywrap containing the FSM 881 endorsement must request an extension of time, based on the amount of polywrap in stock, to the Manager, Rates and Classification Service Center (RCSC), in the designated area as shown in DMM G042.

7. Addressing Guidelines

One commenter expressed concern, although not part of this **Federal Register**, that the Postal Service is working on addressing guidelines and could impose these guidelines as requirements at some future date. This commenter stated that any addressing requirements not be imposed until the Postal Service has performed statistical tests of the requirements to demonstrate that there will be clear benefits to possible new addressing standards. A Flats Addressing Committee was created and consisted of both industry and postal personnel working on addressing guidelines and a communications plan. This cooperative effort has led to a final version of the guidelines, and Postal Service Engineering has validated that adherence to these guidelines will yield the desired result of high readability on the AFSM 100. High automation readability yields both low cost and high quality processing, allowing the Postal Service to hold down operating costs and provide consistent on-time delivery. Address block placement is also incorporated into these guidelines, with the intention of adding efficiency to delivery operations. Furthermore, if the Postal Service finds it necessary to turn any of these guidelines into requirements, the industry will definitely be involved in the decision-making process.

8. Overhang

One commenter inquired whether the lettershops are in agreement with the 1/4 inch (0.25 inch) overhang requirement. The Postal Service consulted with Postal Service Engineering, and based on a review of testing data, the requirement of 1/4 inch (0.25 inch) on each side of the mailpiece will remain unchanged. The Postal Service received no comments from lettershops about this requirement.

9. Polywrap Recertification Process

One commenter stated that his poly film meets the standard for the AFSM 100 and asked whether he needs to supply a new data sheet to the mailpiece design analysts in order to be listed again as an approved vendor. The polywrap certification program requires plastic manufacturers to provide to the producer of the polywrapped flats an official ASTM certification of performance verifying that their polywrap products meet the physical properties described in DMM C820, Exhibit 4.1a. A new requirement, blocking, has been added to the existing seven properties required for automatable polywrap. Therefore, a recertification process will be established in which polywrap vendors currently listed on the Postal Service RIBBS web page will be required to submit an official ASTM certificate

reflecting the eight properties now required for automatable polywrap when processed on the AFSM 100.

10. Final Fold

One commenter proposed that the Postal Service reconsider the revision to the final fold requirement in DMM C820.2.2 that changes the orientation of the mailpiece from one with the final fold at the right and the intermediate fold at the bottom to one with the final fold at the bottom and the intermediate fold to the right. This commenter stated that this revised requirement would change the side of the book on which ink jet is applied and also claimed that mailers/printers will need to retrofit their equipment to be able to spray the ink jet up, instead of down, on these types of pieces and then on the balance of the ink-jetted material. Postal Service Engineering has reviewed the test results and has concluded that folded tabloids are clearly different from bound publications in the thickness of material and that the final fold can leave material at the fold prone to separation at induction. Because ''left'' folded pieces, with the open end going into the feeder, are problematic and this is the reason why the ''right'' fold requirement is needed.

11. Polywrap Properties

One commenter requested the Postal Service to reconsider the current and proposed polywrap requirements relating to predicted ''fitness-for-use'' for automatic mail sorting. This commenter stated that property # 3, secant modulus, is not a good indicator of sorting performance for flats wrapped in ''shrink'' polywrap, especially high performance polyolefin shrink films where peak free shrink is greater than 50%. This commenter also requested that property #6, nominal gauge, be eliminated and that the proposed property # 8, blocking (ASTM D3354–96), will not accurately predict polywrap performance. Postal Service Engineering reviewed these comments and maintains that the extensive testing performed concluded that high modulus characteristics are necessary for nonshrink polywrap. In addition, the nominal gauge property will not be eliminated because considerable field testing data clearly show that >0.001 inch is the most acceptable dimension to specify. Engineering also maintains that, after extensive field testing in accordance with ASTM D3354–96, the results were very clear. Above 15 grams of film from film separation showed a significant increase in the doubles rate. It would be impractical and cost prohibitive to test different kinds of films within the family of film wrapping materials. Engineering addressed the opinion on the proposed use of ASTM D3354–96 for Postal Service polywrap certification. Engineering is aware that the ASTM D3354–96 says in part that it is not intended to predict and measure for susceptibility to blocking. Engineering carefully followed the specification in line with film-to-film contact, time, weight, temperature, and the results obtained were compared with field tests, leading to the determination that 15 grams is the most favorable number that is acceptable.

B. Summary of Domestic Mail Manual (DMM) Changes and Additions

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the *Domestic Mail Manual* (DMM), which is incorporated by reference in the *Code of Federal Regulations* (CFR). *See* 39 CFR part 111.

PART 111—[AMENDED]

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

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

2. Revise the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

C. Characteristics and Content

* * * * *

C800 Automation-Compatible Mail

* * * * *

C820 Flats

* * * * *

1.0 BASIC STANDARDS

[Amend 1.0 by replacing ''FSM 881'' with ''AFSM 100'' to read as follows:]

Flats claimed at automation rates must meet the standards in 1.0 through 8.0 and the general and specific standards for mailability and for the class of mail and rates claimed. Pieces may qualify for automation rates either under the dimensions and characteristics for AFSM 100 processing in 2.0 or under the dimensions and characteristics for FSM 1000 processing in 3.0 except for Bound Printed Matter (BPM) flats, which can qualify only under AFSM 100 criteria. If polywrap is used with pieces that meet AFSM 100 criteria in 2.0, the polywrap must also meet all the physical properties in Exhibit 4.1a and Exhibit 4.1b in order to qualify for automation rates for flats. If polywrap is used with pieces that meet FSM 1000 criteria but do not meet all the AFSM 100 criteria, the polywrap needs to meet only physical property number 2 (haze) in Exhibit 4.1a and the criteria in Exhibit 4.1b.

[Amend the heading of 2.0 by replacing ''FSM 881'' with ''AFSM 100'' to read as follows:]

2.0 CRITERIA FOR AFSM 100 PROCESSING

2.1 Determining Length and Height

[Amend 2.1 by revising 2.1b to read as follows:]

The length (horizontal dimension) and height (vertical dimension) of an automation-compatible flat-size mailpiece is not determined by the orientation of the address but by the preparation of the piece:

* * * * *

b. For a piece prepared with a bound, folded, or closed edge (*e.g.,* a catalog, a newspaper or tabloid, a folded envelope), the length is the dimension parallel to the bound, folded, or closed edge. The height is the dimension perpendicular to the length. If the piece is folded more than once or is bound and then folded, the length is the dimension parallel to the final fold.

2.2 Final Fold

[Revise 2.2 to read as follows:]

An AFSM 100 flat-size piece with a final fold must be designed so that the address is in view when the final folded edge is at the bottom of the piece and any intermediate bound or folded edge is to the right.

2.3 Shape and Size

[Amend 2.3 by amending 2.3a by replacing ''6'' with ''5'' and by revising 2.3b to read as follows:]

Each flat-size piece must be rectangular and:

a. For height, no more than 12 inches and no less than 5 inches high.

b. For length, no more than 15 inches and no less than 6 inches long.

c. For thickness, no more than 0.75 inch and no less than 0.009 inch thick.

[Revise the heading of 2.4 to read as follows:]

2.4 Maximum Weight

[Amend 2.4b by replacing ''16 ounces'' with ''20 ounces'' and by adding new 2.4d to read as follows:]

Maximum weight limits are as follows:

a. For First-Class Mail, 13 ounces.

b. For Periodicals, 20 ounces.

c. For Standard Mail, under 16 ounces.

d. For Bound Printed Matter, 20 ounces.

2.5 Turning Ability and Deflection

[Amend 2.5 by adding introductory sentence and revising 2.5b. to read as follows:]

The piece must meet the following standards for turning ability and deflection:

* * * * *

b. Deflection. A flat-size mailpiece meeting the AFSM 100 dimensions must be rigid enough so that, when placed flat on a surface to extend unsupported 5 inches off that surface, no part of the edge of the piece that is opposite the bound, folded, or final folded edge (as applicable) deflects more than 1¾ inches (if the piece is less than ⅛ inch thick) or more than 2⅜ inches (if the piece is from ⅛ to ¾ inch thick).

[Amend 2.5c by replacing ''USPS area or district customer service support offices'' with ''USPS area or district marketing office or local postmaster'' to read as follows:]

c. Test Device. Testing for compliance with the above standards must be done with a flat mail machinability tester constructed to USPS specification USPS–STD–28 and following the instructions for use of that device. Information about obtaining or using the tester is available from the local USPS area or district marketing office or local postmaster.

3.0 CRITERIA FOR FSM 1000 FLATS

* * * * *

3.2 Address Placement and Folded Pieces

[Revise 3.2a and 3.2b to read as follows:]

The following requirements apply to folded pieces:

a. A flat-size piece with a final fold must be designed so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom of the piece.

b. Unbound flat-sized pieces must be at least double-folded.

* * * * *

[Amend the heading of 4.0 by adding ''Polywrap'' to read as follows:]

4.0 POLYWRAP COVERINGS

* * * * *

[Amend the heading of Exhibit 4.1a by replacing ''FSM 881'' with ''AFSM 100'' to read as follows:]

Exhibit 4.1a AFSM 100 Polywrapped Flats Specifications

[Revise Exhibit 4.1a to read as follows:]

Polywrapped automation flats that meet AFSM 100 criteria in 2.0 must be prepared with polywrap that meets all eight properties in this exhibit. For other pieces prepared with polywrap that do not meet all the criteria for AFSM 100 processing but meet the criteria for FSM 1000 processing in 3.0, the polywrap needs to meet only physical property number 2 (haze).

[Amend Property number 3a and b by reversing requirement column and add new number 8 to read as follows:]

Property	Requirement	Test method	Comment
* * * * *		*	*
3. Secant Modulus, 1% elongation.			
a. TD, psi	>50,000	ASTM D882	
b. MD, psi	>40,000	ASTM D882	
* * * * *		*	*
8. Blocking, g	<15	ASTM D3354–96	

Exhibit 4.1b Wrap Instructions

[Revise Exhibit 4.1b to read as follows:]

1. Wrap direction is specified as the direction around the longer axis of the mailpiece so that the seam is on the addressed side of the mailpiece and oriented parallel to the longest direction. This seam must not cover any part of the address and barcode read areas.

2. a. For an AFSM 100 mailpiece, overhang (selvage) must not be more than 0.75 inch from the top of the mailpiece and 0.75 inch from the bottom of the mailpiece when the contents are centered inside the polywrap. Overhang (selvage) must not be more than 1.5 inches at the top of the mailpiece when the contents are totally positioned at the bottom of the polywrap. Overhang (selvage) on each side must not be more than 0.25 inch. The polywrap covering must not be so tight that it causes the mailpiece to bend.

b. For an FSM 1000 mailpiece, overhang (selvage) must not be more than 0.75 inch from any edge when the mailpiece is centered inside the polywrap. Overhang (selvage) must not be more than 1.5 inches at the top of the mailpiece when the contents are totally positioned at the bottom of the polywrap and not more than 1.5 inches when the contents are totally positioned to the left or to the right side of the polywrap.

4.2 Polywrap Certification Process

[Amend 4.2 by replacing ''FSM 881'' with ''AFSM 100''.]

4.3 Mailpiece Identification

[Amend 4.3 by replacing ''FSM 881'' with ''AFSM 100''.]

* * * * *

4.5 AFSM 100 Polywrap

[Amend the heading and text of 4.5 by replacing ''FSM 881'' with ''AFSM 100''.]

4.6 FSM 1000 Polywrap

[Amend 4.6 by adding the following sentence at the end to read as follows:]

* * * When the address label is placed on the outside of the polywrap, the haze requirement does not apply.

* * * * *

E Eligibility

E000 Special Eligibility Standards

* * * * *

E200 Periodicals

* * * * *

E260 Ride-Along

1.0 BASIC ELIGIBILITY

* * * * *

1.3 Physical Characteristics

[Amend 1.3c by replacing ''FSM 881'' with ''AFSM 100''.]

* * * * *

M MAIL PREPARATION AND SORTATION

* * * * *

M800 All Automation Mail

* * * * *

M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.5 Package Preparation

[Amend 1.5 by replacing ''FSM 881'' with ''AFSM 100''.]

1.6 Sack Preparation

[Amend 1.6 by replacing ''FSM 881'' with ''AFSM 100''.]

* * * * *

1.11 Tray-Based Preparation

[Amend 1.11 by replacing ''FSM 881'' with ''AFSM 100''.]

* * * * *

R RATES AND FEES

* * * * *

R200 Periodicals

1.0 OUTSIDE-COUNTY—EXCLUDING SCIENCE-OF-AGRICULTURE

* * * * *

1.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

* * * * *

2.0 OUTSIDE-COUNTY-SCIENCE-OF-AGRICULTURE

* * * * *

2.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

* * * * *

3.0 IN-COUNTY

* * * * *

1.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

An appropriate amendment to 39 CFR 111.3 will be published in the **Federal Register** to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–14824 Filed 6–11–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7221–9]

RIN 2060–AJ71

Control of Air Pollution from New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify, correct, amend, and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (February 10, 2000), hereinafter referred to as the Tier 2 rule. First, today's action corrects typographical errors and makes other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it modifies the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule modifies the Geographic Phase-in Area (GPA) program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it allows an approved small refiner, under limited circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it amends certain provisions of the small refiner and Averaging, Banking, and Trading (ABT) programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance.

DATES: This direct final rule is effective September 10, 2002, without further notice, unless we receive adverse comments or a request for a public hearing by July 12, 2002. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460.

Docket: Materials related to this rulemaking are available at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail *manners.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final rule if adverse comments are filed. This rule will be effective on September 10, 2002 without further notice unless we receive adverse comment or a request for a public hearing by July 12, 2002. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Regulated Entities

This action will affect you if you produce, distribute, or sell gasoline.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners
Industry	422710	5171	Gasoline Marketers and Distributors
	422720	5172	
Industry	484220	4212	Gasoline Carriers
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (Either select a desired date or use the Search feature.)

Tier 2/Gasoline Sulfur home page: *http://www.epa.gov/otaq/tr2home.htm*

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

I. Corrections of Typographical Errors and Other Minor Revisions
II. Effective Date for Butane Test Method
III. Standards and Compliance for Refiners, Importers, and Individual Refineries
A. Parent Company Compliance with the Corporate Pool Average Standards
B. Partially-Owned Refineries
C. Using Credits and Allotments to Achieve Compliance in 2005
IV. Standards and Compliance for Refiners/Importers That Provide Gasoline to the Geographic Phase-in Area
A. Standards for Gasoline Sold in the Geographic Phase-in Area
B. Credit Generation Beginning in 2004
C. Compliance with the Corporate Pool Average Standard by GPA Gasoline Producers
V. Small Refiners
A. Subsidiary Ownership
B. Adjustment of the Small Refiner Per-gallon Sulfur Standard
VI. Allotments and Credits
A. Generation of Credits in 2000
B. Generation of Allotments in 2003
C. Oxygenate Blenders
D. Conversion of Allotments to Credits
E. Deletion of the Discount Factor for Type A Allotments
F. Standard Applicable Under § 80.310
VII. Downstream Standards and Compliance
A. Test Requirements for S–RGAS and Non–S–GAS Combined to Produce Mid-Grade Gasoline
B. Identifying S–RGAS Prior to Full Receipt Testing
C. S–RGAS Product Transfer Documentation Requirements for Transfers of Custody
VIII. Compliance Requirements and Enforcement
A. Liability for Geographic Phase-In Area (GPA) Gasoline
B. Recordkeeping for Allotments
C. Attest Engagement Requirements
IX. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
B. Regulatory Flexibility
C. Paperwork Reduction Act
D. Intergovernmental Relations
1. Unfunded Mandates Reform Act
2. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
3. Executive Order 13132 (Federalism)
E. Executive Order 13211: Energy Effects
F. National Technology Transfer and Advancement Act
G. Executive Order 13045: Children's Health Protection
H. Congressional Review Act
X. Statutory Provisions and Legal Authority

I. Corrections of Typographical Errors and Other Minor Revisions

Today's rule finalizes corrections of typographical errors and other minor revisions as described in the following chart. These revisions do not change the substance or intent of the sulfur regulations.

§ 80.46(h)	Revised to add ASTM standard method D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry,'' which was inadvertently removed in a prior rule-making action.
§ 80.195(c)(4)	Revised the wording of § 80.195(c)(4) for clarity. This revision does not change the substance or meaning of this provision.
§ 80.205(a)	Revised to change ''value'' to ''level'' for purposes of consistency with the language of other regulatory provisions. This revision does not change the substance or meaning of this provision.
§ 80.216(f)(1)	Revised to change ''§ 80.219'' to ''§ 80.80.219(a)'' for clarity.
§ 80.216(f)(2)	Revised to change ''§ 80.219'' to ''§ 80.219(a)'' and add the words ''including GPA'' for clarity.
§ 80.275(a)(2)(i)	Revised to correct a typographical error in the equation. The equation includes the term ''SA_a'' which should be ''S_a''.
§ 80.275(a)(2)(v)	Revised to correct a typographical error in the equation. The equation includes the Term Sa, which should be S_a.
§ 80.275(h)	Added paragraph (h) to clarify that allotments and credits under § 80.275 are expressed in ppm-gallons to be consistent with regulatory intent and other regulatory provisions.

§ 80.370(a)(4)	Revised to change the word ''content'' to ''level'' for consistency with other regulatory provisions. This revision does not change the substance or meaning of this provision.
§ 80.410(h)(7)(ii)	Revised to add reference to § 80.415 for clarity.
§ 80.415(g)(4)	Revised to add a parentheses at the end of the provision which was omitted in the final rule.

II. Effective Date for Butane Test Method

The Tier 2 rule amended 40 CFR 80.46(a) to require the use of ASTM–D 3246–96 to determine the sulfur content of butane. However, we did not intend for this requirement to apply until January 1, 2004, when refiners that produce gasoline by blending butane into previously certified gasoline must comply with a butane sulfur content standard. As a result, today's rule modifies § 80.46(a) to clarify that the compliance date of the regulatory butane test method, ASTM D 3246–96, is January 1, 2004. In the absence of today's clarification, the compliance date under the Tier 2 rule for the butane test method requirement would be incorrectly stated as April 10, 2000, the effective date of the Tier 2 rule.

III. Standards and Compliance for Refiners, Importers and Individual Refineries

A. Parent Company Compliance With the Corporate Pool Average Standards

The preamble to the Tier 2 rule states that, for purposes of compliance with the corporate pool average standards in 2004 and 2005, a parent company is considered to be the refiner of any refinery facilities owned by wholly-owned [1] subsidiaries of the parent company. As such, a parent company must comply with the corporate pool average standards for any gasoline produced at the refineries owned by its wholly-owned subsidiaries, as well any gasoline produced at any refineries it owns. *See* 65 FR at 6755 (February 10, 2000). The regulations at § 80.195(c), however, do not contain language to implement this requirement. As a result, today's rule adds §§ 80.195(c)(6)(i) and (ii) to include such language. We believe, however, in the situation described above (i.e., where refineries are wholly-owned by a parent company), the parties (i.e., parent and subsidiaries) should have the option to demonstrate compliance with the corporate pool average standards either on a corporate parent level or a subsidiary level. Under this approach, a parent company may: (1) Demonstrate compliance with the corporate pool average standards for all of the gasoline produced at refineries owned by its wholly-owned subsidiaries as well as the refineries owned by the parent company itself, or (2) be deemed in compliance if it demonstrates compliance for the gasoline produced at its own refineries and each wholly-owned subsidiary demonstrates compliance for the gasoline produced at its own refineries. The environmental benefits of the sulfur rule will not be compromised by allowing this option, since compliance on a subsidiary level would result in the corporate pool average standards being met by a greater number of pools with fewer refineries in each pool over which to average the sulfur content. Today's rule, therefore, also adds § 80.195(c)(6)(iii) to provide for this option. Where the parent company opts to have each subsidiary comply individually, the parent company would remain liable for any violations by the subsidiary. *See* § 80.395(a)(11).

A foreign parent company may demonstrate compliance with the corporate pool average standards for all of the gasoline produced at refineries owned by the foreign parent company's wholly-owned U.S. subsidiaries, or each U.S. subsidiary owned by the foreign parent company may demonstrate compliance for its own refineries. Where the foreign parent company opts to demonstrate compliance for its wholly-owned U.S. subsidiaries, any gasoline imported into the U.S. that was produced at the foreign parent company's foreign refineries, or at foreign refineries owned by foreign subsidiaries of the foreign parent company, would not be included in the foreign parent company's corporate pool compliance calculations, since the regulations provide that the sulfur standards, including the corporate pool average standards, are to be met by the importer for all imported gasoline. *See* § 80.195(a)(4). Like a domestic parent company, where parties opt to have each wholly-owned U.S. subsidiary comply individually, the foreign parent company would remain liable under § 80.395(a)(11) for any violations by the subsidiary.

Today's rule also adds language to the reporting provisions in § 80.370(c) to address the corporate pool compliance options discussed above. Where a parent company chooses to comply for the refineries of its wholly-owned subsidiaries, today's rule requires such parent company to identify in its corporate pool average reports to EPA all refinery facilities and subsidiaries wholly-owned by the parent company, and any refinery facilities owned by the parent company's subsidiaries (in the case of a foreign parent company, any U.S. refinery facilities owned by the foreign parent company and any U.S. subsidiaries wholly-owned by the foreign parent company, and any refinery facilities owned by the foreign parent company's U.S. subsidiaries). Where the parent company's wholly-owned subsidiaries comply with the corporate pool average standards individually, each subsidiary must submit the required corporate pool annual compliance reports for its own refineries and identify in the reports the parent company and each refining facility owned by the subsidiary.

B. Partially-Owned Refineries

In some situations a refinery may be owned by more than one party. The Tier 2 rule specifically addresses situations in which a refinery is owned by a joint venture. *See* § 80.195(c)(5). EPA considers a joint venture to be a situation in which two or more parties collectively own and operate one or more refineries. *See* 65 FR 6755. EPA expects that most cases of shared refinery ownership will be considered joint ventures under the regulations. There are situations, however, where a refinery is owned by more than one party, but not all parties participate in the refinery's operation. Although in this situation the joint owners are not considered a joint venture under the regulations, such a refinery is considered a separate entity and the refiner of that refinery is the business entity consisting of the joint owners. We believe that, in such a situation, one of the owners should be allowed to include the refinery in its corporate pool for purposes of compliance with the corporate pool average standards, as the regulations allow in joint venture situations. As a result, today's rule adds § 80.195(c)(5)(iii) to allow a refinery that is collectively owned to be included in

[1] Compliance with the corporate pool average standards for partially owned refineries is discussed in preamble section III.B. below. Note that while a parent company is responsible for its wholly-owned subsidiaries for purposes of compliance with the corporate pool average standards, subsidiaries in which a refiner has a 50 percent or greater ownership interest must be included in a refiner's employee and crude capacity data for purposes of meeting the employee and crude capacity criteria for small refiner status under § 80.225(a). This difference in the way subsidiaries are treated under the corporate pool and small refinery provisions is due to the different purposes of these provisions. For a further discussion of the treatment of subsidiaries under the small refiner provisions, see preamble section V of today's rule.

one of the owner's corporate pool for purposes of compliance with the corporate pool average standards. Today's rule also revises § 80.395(a)(12) (providing for joint venture liability) to include liability for business entities consisting of joint owners of a refinery or refineries.

C. Using Credits and Allotments To Achieve Compliance in 2005

The regulations currently require a refiner or importer, in 2005, to demonstrate compliance with the 90 ppm corporate pool average standard by calculating its actual corporate average sulfur level using the actual sulfur levels of each batch of gasoline and then applying allotments, as necessary, to meet the 90 ppm standard. Credits may not be used to achieve compliance with the corporate pool average standard. See § 80.315(c)(4). The regulations also require a refiner for each refinery, or an importer, beginning in 2005, to demonstrate compliance with the refinery or importer average standard by calculating the actual refinery or importer sulfur level using the actual sulfur levels of each batch of its gasoline, and applying credits, as necessary, to meet the 30 ppm refinery average standard. The regulations identify the corporate pool average and refinery average standards as two separate standards and refiners and importers are required to comply with each standard independently.

In 2005 only, refiners and importers may use allotments as well as credits to demonstrate compliance with the refinery or importer average standard.[2] See § 80.195(b)(4). These credits or allotments may be obtained from any source. A refiner with more than one refinery may use credits generated by one or more of its refineries that have an average sulfur level below 30 ppm toward meeting the refinery average standard at one of the other refineries in the refiner's corporate pool. Alternatively, the refinery may choose to bank or sell its credits, as permitted by the regulations. In 2005, the same allotments used to demonstrate compliance with the corporate pool standard may be used by a refinery in the pool toward its demonstration of compliance with the refinery average standard, or some of the allotments may be used by one refinery and the remainder used by another refinery or refineries in the pool. For example, a refiner with two refineries who obtains 30 allotments to achieve compliance with the corporate pool standard may also apply all 30 allotments to one refinery, or some of the allotments to each of the two refineries, toward meeting the refinery average standard (e.g., 15 allotments to each refinery; 20 allotments to one refinery and 10 allotments to the other; etc.). The current regulations, however, do not clearly address how allotments may be used to demonstrate compliance with the corporate pool average standard and the refinery average standard in 2005. As a result, today's rule adds § 80.195(b)(4) to make this clarification.[3]

[2] Note, however, that allotments may be converted to credits and used to demonstrate compliance with the refinery or importer average standard as provided under § 80.275(e).

[3] The preamble to the Tier 2 rule states that, in 2005, a refiner first must demonstrate compliance with the corporate pool average standard of 90 ppm, and then demonstrate compliance with the refinery average standard using a maximum of 90 ppm as the average sulfur level for each refinery, and applying credits to bring each refinery's average down to 30 ppm. See 65 FR 6760. In a Question and Answer document dated May 2000, we indicated that this preamble discussion is not consistent with the manner in which compliance is demonstrated under the regulations; i.e., compliance with the corporate pool average standards and with the refinery average standards is demonstrated separately, and refiners are required to use actual sulfur levels in computing the refinery average, as compared to using the presumed levels of 90 ppm for each refinery after demonstrating compliance with the corporate pool average standard. As a result, we withdrew the preamble discussion as guidance for interpreting the regulations on this particular issue. We stated that the regulations do not impose any particular priority on compliance with the corporate average and refinery average standards in 2005. Contrary to statements in the preamble, refiners need not first demonstrate compliance with the corporate pool average standard; rather, each standard is independent of the other and must be met as such.

IV. Standards and Compliance for Refiners/Importers That Provide Gasoline to the Geographic Phase-in Area

A. Standards for Gasoline Sold in the Geographic Phase-in Area

In the Tier 2 rule, we established a geographic area in which the low sulfur gasoline program will be phased-in differently than the national program. This program, referred to as the Geographic Phase-In Area (GPA) program, covers seven states in the Rocky Mountains and Upper Great Plains,[4] as well as Alaska.

The GPA program provides refiners additional flexibility in complying with the requirements of the low sulfur gasoline program. More specifically, the program provides that refiners may temporarily meet less stringent standards from 2004 through 2006 for gasoline sold in the GPA. Since the low sulfur gasoline standards under the national program require compliance with a 30 ppm refinery average standard and an 80 ppm cap in 2006, the geographic phase-in provides an additional year to reach those standards. This extra year and the somewhat less stringent standards during the phase-in provide the refining industry the opportunity for a more orderly transition to the 30/80 ppm standards in 2007.

In the First Amendment to the Tier 2 rule (66 FR 19296, April 13, 2001), we identified 74 counties in six states that adjoin the core GPA states which should be included in the GPA. The intention of this amendment was to ensure a smooth transition to low sulfur gasoline nationwide and to mitigate the potential for gasoline supply shortages. The amended GPA is shown in Figure 1 below.[5]

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[4] Colorado, Idaho, Montana, New Mexico, North Dakota, Utah, and Wyoming.

[5] The eight core GPA states contain a number of American Indian reservations. These reservations are fully included in the GPA under today's action. The adjacent counties discussed above also contain 25 American Indian reservations. If a reservation is only partly within a GPA state or adjacent county, it is considered fully in the area for purposes of the GPA program. This is consistent with the inclusion of entire states or counties in the program.

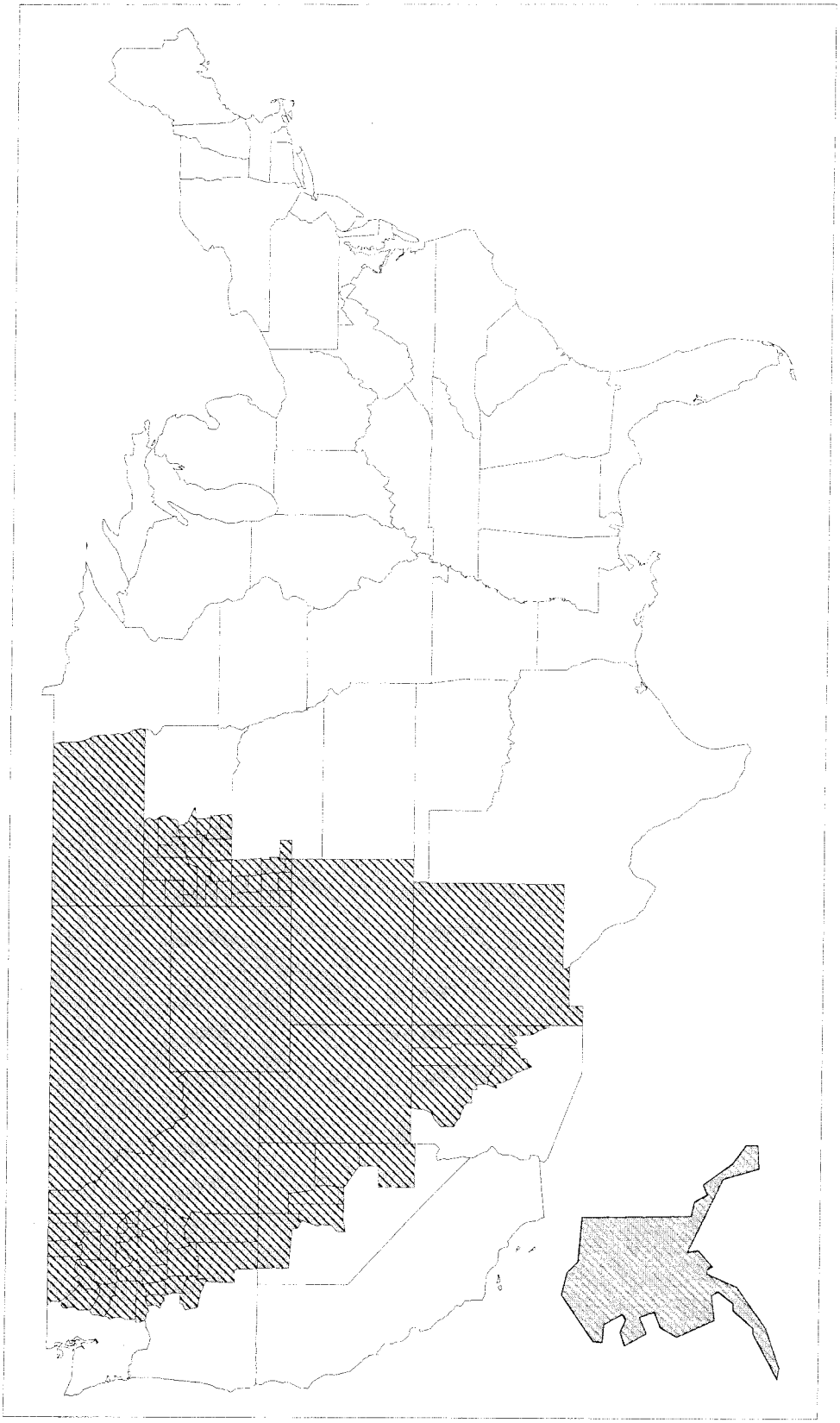

Figure 1: Geographic Phase-in Area

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The requirements for gasoline sold in the GPA, as prescribed by the Tier 2 rule, are summarized in Table 1 below. Gasoline produced by any refiner and/

or importer can be sold in the GPA provided that the refiner and/or importer registers with us (See § 80.217) and sells gasoline within the GPA that is consistent with the requirements specified in the regulations.

TABLE 1.—GASOLINE SULFUR STANDARDS FOR THE GEOGRAPHIC PHASE-IN AREA

[Excludes small refiners]

Compliance as of:	2004	2005	2006
Refinery GPA Gasoline Average,[a] ppm	150	150	150
Corporate Pool Average,[b] ppm	120	90	Not Applicable
Per-Gallon Cap,[c] ppm	300	300	300

NOTES

[a] The refinery average standard for GPA gasoline is the most stringent of: 150 ppm; the refinery 1997–1998 baseline plus 30 ppm; or the sulfur level from which early credits were generated plus 30 ppm. Refiners can use credits or allotments to meet the average.

[b] Applies only to refiners/importers which sell more than 50 percent of their gasoline outside the GPA.

[c] In 2004, both GPA and Non-GPA gasoline may have a sulfur content as high as 350 in which case the refinery or importer becomes subject to a correspondingly more stringent cap standard in 2005.

The Tier 2 rule (See § 80.216(a)) states that those refiners or importers that sell gasoline to the GPA, regardless of whether they are located within or outside of the area, have refinery/importer standards for gasoline sold within the GPA that are equal to the least of (1) 150 ppm, (2) the refinery's or importer's 1997–98 average sulfur level plus 30 ppm or (3) the refinery's or importer's lowest actual annual sulfur level plus 30 ppm in any year 2000–2003 if credits are generated. The intent of the second and third conditions for determining the refinery/importer standards, also known as ''anti-backsliding'' conditions, was to prevent refineries that have relatively ''clean'' (i.e., low sulfur) baselines from becoming dirtier (i.e., backsliding to 150 ppm) and producing higher sulfur gasoline during the interim years of the program.

After the Tier 2 rule was promulgated, one refiner submitted comments opposing the anti-backsliding concept. This refiner argued that the anti-backsliding provision potentially eliminates the intended flexibility of the GPA program. Furthermore, this refiner believed that the provision creates an unfair, anti-competitive market situation among refiners competing in the same area (IVA–01). While some gasoline that is sold in the GPA may have an annual average standard of 150 ppm sulfur, other gasoline that is produced at refineries with clean baselines is subject to a more stringent standard. Refiners that currently have access to and rely on sweet (relatively low sulfur) crude slates are especially concerned. These refiners may not be able to comply with the program's standards if they lose their access to these sweet crude slates due to economics (e.g., a given refiner loses its sweet crude contract to a higher bidder) or lack of availability (there is some evidence that suggests that crude quality, especially in PADD IV, is declining and becoming more sour [6]). An unintended consequence of the anti-backsliding provision is that if such refineries should lose their current sweet crude slate, they would have to install desulfurization equipment in order to comply with the GPA standards. Thus, the GPA program would have little benefit for such refiners.

We have reassessed the concerns raised and find that they have merit on both technical and equity grounds. There is no technical reason why gasoline sulfur levels would automatically increase at refineries with cleaner baselines if we eliminated the anti-backsliding provision. As noted by commenters, however, there are situations where changed circumstances mean the anti-backsliding provision would have the unintended consequence of depriving a GPA refinery of any benefit from the GPA provision. Therefore, we believe it is appropriate to eliminate the anti-backsliding provisions from the GPA program. As a result, all gasoline that is designated as GPA gasoline must meet a refinery average standard for GPA gasoline equal to 150 ppm sulfur from 2004 through 2006 regardless of the refiner's 1997–1998 baseline or whether such refiner generates credits during the 2000–2003 time frame by producing gasoline with sulfur levels below 150 ppm. Because no gasoline designated as GPA gasoline to be sold in 2004 has been produced, the GPA standard finalized by today's rule supercedes any approvals of GPA standards issued under the prior provisions at § 80.216(a). Therefore, for any refiner or importer who has received a letter from EPA approving a GPA standard below 150 ppm, that refiner's or importer's standard for GPA gasoline is changed to 150 ppm by today's rule.

Even though we have revised the GPA program to set a refinery or importer annual average sulfur standard of 150 ppm for gasoline sold in the GPA, the overall emission benefits of the early years of the Tier 2 rule are not reduced over those described in the final rule. The air quality analysis of the Tier 2 rule was based on the premise that all gasoline produced or used in the GPA would be at a sulfur level of 150 ppm. We believe that setting a flat standard of 150 ppm for GPA gasoline as described above will still allow the objectives of the GPA program to be achieved. In addition, we expect little or no increase in the gasoline sulfur levels as a result of today's action and thus forecast the same air quality benefits.

B. Credit Generation Beginning in 2004

The Tier 2 rule provides that a refiner for any refineries and importers may generate credits in 2004 and beyond if the annual average sulfur level of the gasoline that they produce or import during a given compliance year is less than their applicable annual average gasoline sulfur standard in that year (See § 80.310). For GPA gasoline, credits are calculated as follows:

$$CR_a = V_a \times (S_{Std} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Std} = The least of 150 ppm, the refinery's or importer's 1997–98 baseline, or the refinery's lowest actual annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.[7]

[6] Swain, Edward J.; Processed-crude Quality in US Continues Downward Trend; Oil & Gas Journal; March 13, 2000.

[7] The definition of S_{Std} for GPA gasoline was subsequently changed to read ''the standard for GPA gasoline established for a refinery under § 80.216(a).'' 66 FR 19296 (April 13, 2001).

S_a = Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

As discussed in section IV.A., above, we are eliminating the anti-backsliding provisions from the GPA program, therefore all gasoline that is designated as GPA gasoline will now have an annual average standard equal to 150 ppm sulfur. To prevent refineries that have existing low gasoline sulfur baselines from generating windfall credits (now that their GPA standard will be 150 ppm), we are also modifying the credit generation rules (beginning in 2004) for GPA gasoline. We believe that the amended regulations will allow for the generation of credits during the 2004–06 period comparable to the number of credits that could be generated under the Tier 2 rule, even though the standard for all GPA gasoline will be 150 ppm sulfur. For example, through this amendment, a refinery with a 50 ppm sulfur baseline will have a revised standard of 150 ppm for its GPA gasoline, as opposed to 80 ppm (i.e., 50 ppm baseline + 30 ppm) under the Tier 2 rule.[8] If today's rule eliminated the anti-backsliding provisions but did not revise the credit generation provisions, then the S_{Std} would always be 150 ppm for purposes of credit generation. Consequently, the same refiner producing gasoline (assume 10,000 gallons for simplification) at 80 ppm (which is 30 ppm higher than its existing baseline) in 2004 for sale in the GPA would generate 700,000 ppm-gal credits (10,000 gallons * (150 − 80 ppm sulfur)) without taking any steps to produce lower sulfur gasoline. Therefore, for purposes of credit generation for GPA refineries, we are preserving the calculus used for credit generation purposes in 2004 and beyond (even though refineries are now subject to a 150 ppm standard) by replacing ''S_{Std} with ''S_{Credit}'' , as discussed below.

Under today's final rule, credits for GPA gasoline are calculated as follows from 2004 through 2006[9]:

$$CR_a = V_a \times (S_{Credit} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Credit} = The least of 150 ppm or the refinery's or importer's 1997–98 baseline or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

S_a = Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

From 2004 through 2006, all GPA gasoline will have a standard of 150 ppm sulfur. For credit generation purposes, refineries with existing baselines cleaner than 150 ppm will generate credits relative to their baseline while refineries with existing baselines dirtier than 150 ppm will generate credits relative to 150 ppm. Similar to how credits are generated in 2000 through 2003, credits for GPA gasoline produced in 2004 through 2006 may only be generated if the annual average sulfur level for the gasoline produced during the averaging period is less than 0.9 of the refinery's sulfur level that is used for credit generation purposes (i.e., 90 percent of the sulfur baseline for refineries with baselines below the 150 ppm standard and 90 percent of 150 ppm (135 ppm) for refineries with baselines above the standard).

For example, a refinery with a baseline of 100 ppm sulfur that lowers its sulfur level to 75 ppm in 2004 would generate credits equal to V_a (volume of gasoline produced at the refinery)* ($S_{credit} - S_a$) where S_{credit} equals 100 ppm and S_a equals 75 ppm (100 − 75 ppm equals 25 ppm), thus ppm-gallon credits would equal V_a * 25 ppm. On the other hand, a refinery with a baseline of 200 ppm that lowers its sulfur level to 125 ppm in 2004 would also generate ppm-gallon credits equal to V_a * 25 ppm (150 − 125 ppm). The refiner in the first example generates credits from a 100 ppm starting point (despite the 150 ppm annual average standard applicable to all GPA gasoline) whereas the refiner in the second example generates credits from a 150 ppm starting point since its current baseline is not cleaner than the 150 ppm annual average standard applicable to all GPA gasoline.

Once a GPA refiner/importer begins complying under the national program in 2007, credits are generated relative to the 30 ppm refinery average standard.

In summary, the provisions of this section under today's final rule eliminate the anti-backsliding standards provision of the Tier 2 rule and set the standard for GPA gasoline uniformly at 150 ppm for the duration of the GPA program (in general, from 2004 through 2006). In addition, this rule modifies the credit generation requirements of the ABT program that begin in 2004 to prevent the potential for windfall credits. This modification will allow for the generation of credits during the 2004–06 period comparable to the number of credits that could be generated under the Tier 2 rule, even though the standard for GPA gasoline will be 150 ppm sulfur.

C. Compliance With the Corporate Pool Average Standard by GPA Gasoline Producers

The Tier 2 rule provides that a refiner or importer must meet the corporate pool average standards under § 80.195 if GPA-designated gasoline comprises less than 50 percent of the refiner's or importer's total gasoline production or volume of imported product during the annual averaging period. See § 80.216(f). The preamble to the Tier 2 rule indicates that we intended GPA gasoline refiners and importers that are subject to the corporate pool average standards to use the same compliance process as other refiners and importers subject to the corporate pool average standards in 2004–2005. See 65 FR 6763. Thus, refiners and importers of GPA gasoline that are subject to the corporate pool average standards must demonstrate compliance with both the corporate pool average standard and the applicable refinery or importer average standard in the same manner as other refiners and importers; i.e., GPA refiners and importers subject to the corporate pool average standards must comply with the corporate pool standard and their GPA refinery or importer average standard (and non-GPA refinery or importer standard) independently. See preamble section III.C. above. Under this approach, compliance with the refinery or importer annual average and corporate pool standards is based on the refinery's or importer's actual sulfur levels, and credits or allotments, as appropriate, may be applied to achieve the standard if the actual sulfur level does not meet the standard. We believe, however, that the current regulations at § 80.205(f), may be read to be inconsistent with this approach. This provision provides that, ''For GPA refiners subject to the corporate pool average that produce some GPA gasoline, the refinery average sulfur value for its GPA gasoline shall be the average sulfur value of the gasoline after applying credits.'' Because we believe this provision may be misleading and is unnecessary, today's rule deletes this paragraph.

[8] This assumes that no credits were generated from 2000–2003 by going 10 percent below 50 ppm which would decrease the standard even further.

[9] Except for gasoline and diesel producing refineries that choose the Gasoline/Diesel compliance date option under the low sulfur diesel fuel program (See § 80.540). Under this option, refineries that fully comply with the low sulfur diesel fuel requirements by 2006 may extend their GPA gasoline standards through 2008.

V. Small Refiners

A. Subsidiary Ownership

Under the Tier 2 rule, a small refiner is defined as any person who: (1) Produces gasoline at a refinery by processing crude oil through refinery processing units; (2) employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1998, to January 1, 1999; and (3) had an average crude capacity less than or equal to 155,000 barrels per calendar day for 1998. See § 80.225(a)(1). Section 80.225(a)(2) provides that, for purposes of determining the number of employees and crude capacity, the refiner must include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. The regulations, however, do not specify the level of ownership that is required before a subsidiary must be included.

We believe that a refining company that has assets against which capital may be raised, such as subsidiary companies in which it has a 50 percent or greater ownership interest, or whose parent company has such assets, is in a better position to finance and install desulfurization equipment to comply with the sulfur standards in 2004. As a result, today's rule specifies that a subsidiary must be included in the small refiner's employee and crude capacity calculations if the refiner or the parent company of the refiner has a 50 percent or greater ownership interest in the subsidiary. This action is consistent with the intent of the small refiner hardship provisions to provide flexibility for small business refiners that lack the resources available to larger companies to raise capital for investing in desulfurization equipment by allowing them additional time to comply with the sulfur standards. This interpretation is also consistent with the Small Business Administration's regulations regarding size eligibility and standards. See 13 CFR 121.103.

B. Adjustment of the Small Refiner Per-gallon Sulfur Standard

Since the final Tier 2 rule was issued, EPA has become aware of the possibility that some small refiners may face unusual circumstances that could impede their access to the special interim sulfur program developed for small refiners. We are aware of at least one small refiner that appears to face extreme difficulty in meeting the minimum requirements to participate in the interim program, specifically the per-gallon cap sulfur standard established under § 80.240. We did not intend for the partial sulfur reductions that the interim per-gallon standards require in our small refiner interim program to prevent such small refiners from benefitting from the program. To address this problem, we are adding a new provision that will, under limited circumstances, allow an approved small refiner to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Such a small refiner will still be required to meet its established refinery annual average sulfur standards under § 80.240.

Under today's new provision, a refiner with approved small refiner status may request that EPA adjust its established per-gallon cap standard. An application for such a waiver must demonstrate that complying with the established small refiner per-gallon standard would effectively require the refiner to comply with the general (non-small-refiner) sulfur standards in 2004, 2005, and 2006 instead of the less stringent interim standards in the small refiner program for 2004 through 2007. Depending on the facts provided by the refiner about the difficulty that the established cap causes, EPA may, in its discretion, adjust the applicable small refiner per-gallon cap and establish the duration of such an adjusted per-gallon cap. Under no circumstances will EPA approve an adjusted per-gallon cap above 450 ppm sulfur or an adjusted per-gallon cap that applies beyond December 31, 2007.

Any small refiner for which EPA adjusts its per-gallon cap standard must also obtain and use sulfur credits or allotments to offset the emission increase from any batch of gasoline that exceeds the established per-gallon sulfur standard. The number of credits or allotments required to be used for this offset is calculated from the difference between the adjusted per-gallon cap and the established cap under § 80.240. The purpose of this requirement is to ensure that the overall environmental benefit of the gasoline sulfur program is maintained. Since excursions of a refinery's gasoline sulfur levels increase emissions, we believe that it is warranted to require that any such excess emissions be offset by lower emissions at this or another refinery. In addition to offsetting the increase in emissions, the requirement to use credits/allotments will also provide an incentive for refiners using this provision to minimize the frequency and degree that their gasoline exceeds their established per-gallon cap standard.

Today's new provision requires the refiner to use sulfur credits or allotments in numbers equal to the degree that any batches of gasoline exceed the established per-gallon standard over the course of each year in which the adjusted cap standard is in effect. Such credits or allotments must be separate from and in addition to any credits or allotments used by the refiner to comply with its annual average standard. The refiner must obtain and use the required total number of credits or allotments for the year by the time it submits its annual sulfur batch report. An adjustment to a small refiner's established per-gallon cap or the use of credits or allotments to offset the adjustment will not affect compliance with the annual average standard, which will continue to be based on the actual sulfur levels of each of that averaging period's gasoline batches and any credits or allotments applied against the annual average standard.

Under today's new provision, a small refiner that has an adjusted per-gallon cap will be liable for violations of the regulation if it either produces a batch of gasoline that exceeds the adjusted cap or it fails to apply the required number of credits or allotments to offset the cap adjustment. In the refiner's annual batch report to EPA, it must demonstrate that the required number of credits or allotments has been used to offset the per-gallon cap adjustment. A failure to use the required number of credits or allotments will constitute a violation, and each subsequent day that the required number of credits or allotments is not used constitutes a separate day of violation.

Because small refiners constitute a relatively small fraction of national gasoline production, and because the required credits or allotments will offset an adjustment of the per-gallon standard, we believe any adverse environmental consequences of this provision will be very small.

VI. Allotments and Credits

A. Generation of Credits in 2000

In designing the ABT provisions for the gasoline sulfur program, we intended to permit refiners to earn sulfur credits for gasoline produced during the year 2000. The regulations governing the creation of credits require all gasoline produced during the averaging period, defined as January 1 through December 31, to be included in the credit calculation. Because the rule was issued at the beginning of 2000, refiners that were not in immediate compliance with its sampling, testing, and documentation requirements were

unable to generate year 2000 credits. Today's amendment permits refiners to generate year 2000 credits using an averaging period less than the full calendar year, beginning with the first full month for which all required data is available.

B. Generation of Allotments in 2003

Section 80.285(a) provides that early credits in 2000–2003 may only be generated by refiners that produce gasoline from crude oil. EPA intended this limitation also to apply to the generation of early allotments, since the same rationale for including this limitation for early credits applies to early allotments (i.e., refiners that do not produce gasoline from crude oil do not have the same need for the allotment program because they will not have to make the same level of investment in desulfurization technology as refiners that process crude oil). See 65 FR 6762 for further discussion of the rationale for this limitation. However, language to implement this limitation for early allotment generation was inadvertently omitted in the final rule. As a result, today's rule corrects this oversight by including language in § 80.275(a)(1) which limits early allotment generation in 2003 to those refiners that produce gasoline from crude oil.

C. Oxygenate Blenders

Under the Tier 2 rule, oxygenate blenders are subject to the requirements and prohibitions applicable to downstream parties and the prohibition specified in § 80.385(e), but they are not subject to the provisions for refiners, including the refinery and corporate pool average standards in § 80.195. See § 80.212. Because oxygenate blenders are not subject to the refinery average standards, the regulations provide that oxygenate blenders may not generate credits beginning in 2004, since these credits are generated based on reductions from the refinery average standard. See § 80.285(b)(3). The same rationale applies to the generation of allotments in 2004–2005, since allotments are generated based on reductions from the corporate pool average standards. See § 80.275(b). However, language to implement this limitation regarding allotments was inadvertently omitted in the final rule. Today's rule corrects this oversight by adding § 80.275(b)(4) which provides that oxygenate blenders may not generate allotments in 2004–2005. See 65 FR 6761, 6800, for further discussion of the treatment of oxygenate blenders under the sulfur rule.

D. Conversion of Allotments to Credits

Section 80.275(c) of the Tier 2 rule states that allotments generated in 2003 or 2004 which are carried over to 2005 and used to meet the corporate pool standard in 2005 are discounted by 50 percent. Such allotments that have been carried over may also be converted into credits for compliance with the refinery average standard in 2005 and beyond. As a result, where allotments generated in 2003 or 2004 are carried over to 2005 and then converted into credits, such credits would retain only 50 percent of the value of the original allotments generated in 2003 or 2004. However, the rule also allows allotments to be converted into credits before being carried over to 2005. Such credits would not be discounted when they are carried over, and, therefore, would retain 100 percent of the value of the original allotments. Further, an allotment that is converted into a credit before being carried over to 2005 may be reconverted into an allotment for use in achieving compliance with the corporate pool average in 2005, but the allotment will be discounted 50 percent (i.e., bringing the value of the carried-over allotment back to what it would have been if it had never been converted to a credit). See 65 FR at 6765. Language to implement these conversion requirements was inadvertently omitted in the final rule. As a result, today's final rule adds § 80.275(e)(3) to address these requirements.

E. Deletion of the Discount Factor for Type A Allotments

The preamble to the Tier 2 rule states that early allotments generated in 2003 may be discounted depending on the refiner's actual sulfur level. If a refiner fully demonstrates compliance by producing gasoline with an actual annual average sulfur level of zero to 30 ppm, the allotments retain their full value. For actual annual average sulfur levels of 31–60 ppm, which are indicative of a partial demonstration of compliance with the ultimate low sulfur standard, the allotments are discounted 20 percent. See 65 FR 6759. The current regulations at § 80.275(a)(2)(i) and (a)(2)(ii), however, include a discount factor (0.8) for early allotments generated based on annual average sulfur levels of zero to 30 ppm. This was an error in the final rule. Today's rule corrects this oversight by eliminating the discount factor for such allotments. Allotments generated based on actual annual sulfur levels of 31–60 ppm will continue to be discounted by 20 percent (thus a discount factor of 0.8).

F. Standard Applicable Under § 80.310

Section 80.310(a) provides that a refiner, for any refinery, or importer may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than the applicable refinery or importer annual average sulfur standard for that refinery or importer in that year. However, the 30 ppm refinery or importer annual average standard does not become effective until 2005. See § 80.195(a). As indicated in the equation in § 80.310(b), EPA intended credits beginning in 2004 to be generated based on reductions from the 30 ppm annual average standard (or small refiner or GPA standard, as applicable). See also 65 FR 6763. As a result, today's rule revises § 80.310(a) to clarify that, for refiners and importers that are not subject to the small refiner or GPA standards, the refinery or importer annual average 30 ppm sulfur standard applicable to the refinery or importer beginning in 2005 applies for purposes of credit generation in 2004 and beyond.

VII. Downstream Standards and Compliance

A. Test Requirements for S–RGAS and Non–S–RGAS Combined to Produce Mid-Grade Gasoline

Section 80.210(d)(3) provides that gasoline comprised in whole or in part of small refiner gasoline (S–RGAS)[10] may qualify for the S–RGAS downstream standards provided that: (1) The gasoline is sampled and tested at the location after the most recent receipt of gasoline into the tank; and (2) the test result establishes that the sulfur content of the gasoline is over the cap standard. It is common in the gasoline distribution system for a terminal to supply transport trucks with midgrade gasoline by blending regular grade gasoline from one tank with premium grade gasoline from another tank. This mixing occurs as the truck is receiving gasoline from the different tanks. We believe the requirements for sampling and testing S–RGAS under the sulfur rule may have the effect of constricting the use of this common blending procedure. For example, if premium grade S–RGAS is blended with regular grade non-S–RGAS, under the current regulations, sampling and testing would

[10] The sulfur regulations define S–RGAS as ''gasoline that is subject to the standards under § 80.240 or § 80.270, including Certified Sulfur–FRGAS as defined in § 80.410, except that no batch of gasoline may be classified as S–RGAS if the actual sulfur content is less than the applicable per-gallon refinery cap standard specified in § 80.195.'' § 80.210(a).

be required before the resulting midgrade gasoline could be designated as S–RGAS on PTDs.

It was not the Agency's intention to constrict the use of this common blending procedure to create midgrade gasoline by imposing a possibly prohibitive new testing requirement on such blending. Therefore, the Agency is adding § 80.210(e)(5) to clarify that in instances where S–RGAS is combined with non-S–RGAS in truck compartments for the sole purpose of producing midgrade gasoline, the resulting gasoline may be classified on product transfer documents as S–RGAS even though no S–RGAS sampling and testing was conducted after the midgrade mixture was created. However, if the combining of the two products was not for the purpose of producing midgrade gasoline, this testing exemption would not apply.

B. Identifying S–RGAS Prior to Full Receipt of Gasoline

As indicated in Section A, above, for gasoline to qualify as S–RGAS, a terminal must sample and test the gasoline subsequent to the most recent receipt of gasoline into the terminal's storage tank. See § 80.210(d)(3). The terminal is not required to perform the testing until the entire load of new gasoline is received into the storage tank. However, it is a common industry practice for terminals to provide gasoline to a truck at the terminal's truck rack at the same time the terminal is receiving gasoline into the same storage tank that is supplying the truck. In some cases, the gasoline already in the terminal's storage tank is classified as S–RGAS when the new delivery of gasoline is received into the tank, while the new delivery of gasoline is not classified as S–RGAS. In other cases, the gasoline in the storage tank is not classified as S–RGAS, while the new delivery of gasoline is classified as S–RGAS. Until all of the new load of gasoline has been received into the storage tank, the current rule requires that the truck carrier be given a product transfer document (PTD) with the designation of the gasoline already in the storage tank, regardless of the status of the gasoline from the new delivery.

There is concern about this classification procedure because in many situations gasoline is bottom-loaded into the terminal storage tank while the truck rack is also being supplied from the bottom of the storage tank. Where S–RGAS is loaded into the bottom of a terminal storage tank containing non-S–RGAS, and the truck is also being loaded from the tank bottom, the truck may be receiving a load that properly meets the standards for S–RGAS, but the PTD for the gasoline would indicate that it is non-S–RGAS. Because of the non-S–RGAS designation, the higher small refiner standard would not apply to this gasoline, and, as a result, the gasoline may be found in violation if tested by the Agency. To remedy this situation, today's rule adds § 80.210(e)(6) to permit a terminal to issue to the trucker a PTD which states that the product is S–RGAS before the storage tank fully receives the load of S–RGAS product. This provision applies only in situations where S–RGAS is loaded into a terminal storage tank simultaneously supplying gasoline to the truck, and only until full receipt of the load of S–RGAS into the storage tank. At that point, the regular testing requirements would apply.

C. S–RGAS Product Transfer Documentation Requirements for Transfers of Custody

The Tier 2 rule requires that on each occasion when downstream parties transfer title or custody of gasoline that is classified as S–RGAS, the transferor must provide the transferee with PTDs identifying the S–RGAS status and standard applicable to such gasoline. See § 80.210(e)(2). Whether the gasoline is classified as S–RGAS on the PTDs depends upon 1) the gasoline being comprised in whole or in part of S–RGAS, 2) the receipt of a PTD stating that the product is S–RGAS, and 3) a test result confirming that the sulfur content exceeds the regulatory threshold under § 80.210(d)(3). The intent of these PTD identification requirements is to provide the transferee with accurate S–RGAS information about the gasoline received. Where a downstream party transferring custody of gasoline provides accurate information as to S–RGAS status and sulfur standard, as applicable, to its transferee on its Bill of Lading (BOL), the Agency believes that the goal of transferring accurate S–RGAS information is effectively satisfied. Therefore, in situations in which both a custody PTD on a BOL and a separate title PTD are generated by a downstream party for the same gasoline, the requirement of S–RGAS status and standard transmission is satisfied if both the custody transfer PTD and the title transfer PTD accurately provide the required information, or the custody transfer PTD provides the required information and the title transfer PTD indicates that the required information is contained in the custody PTD. Today's rule adds § 80.210(e)(7) to clarify these PTD requirements for S–RGAS.

VIII. Compliance Requirements and Enforcement

A. Liability for Geographic Phase-In Area (GPA) Gasoline

Sections 80.395(a)(5) and (a)(6) provide for liability for violations of the GPA use prohibitions at § 80.219(c). The language currently in these provisions imposes presumptive liability on those parties who sold or transferred the gasoline found to be in violation, as well as on those parties who caused another party to violate the GPA requirements. However, these provisions do not include presumptive liability for those parties actually operating the facilities where the violations occurred—the very parties with the most obvious and logical ties to the violations. The language in these provisions was meant to replicate the liability language for similar violations in EPA regulations, such as the Tier 2 rule's cap standard violations in § 80.395(a)(3) and (a)(4), and the reformulated gasoline (RFG) program's violations in § 80.79(a)(1) and (a)(3). These other liability sections impose presumptive liability not only on the parties who sold or transferred the gasoline in violation, but also on those parties at whose facilities the violation occurred. Today's rule revises §§ 80.395(a)(5) and (a)(6) to be consistent with the more logical liability scheme and violation provisions already incorporated into other EPA fuel programs.

B. Recordkeeping for Allotments

Section 80.365 of the Tier 2 rule contains requirements for retaining records which demonstrate compliance with the sulfur standards and requirements. This section is intended to cover records pertaining to the generation, use, and transfer of credits and allotments. See 65 FR 6810. Section 80.365(d)(2) contains requirements regarding the length of time records pertaining to early credits must be kept. However, this provision incorrectly does not include similar requirements for early allotments. This was an oversight in the final rule. Today's rule corrects this oversight by revising § 80.365(d)(2) to provide that the records required to be kept for early credits must also be kept for early allotments.

C. Attest Engagement Requirements

Under § 80.415(a)(3) of the Tier 2 rule, if a refinery's or importer's annual average sulfur content for any year in which early credits were generated was less than the refinery's or importer's baseline level, the attest engagement for that refinery or importer must include

as a finding the lowest annual sulfur level as the new baseline value. For GPA gasoline 30 ppm must be added to this new baseline value to obtain the GPA standard, not to exceed 150 ppm.

The attest provisions of § 80.415(a)(3) were intended to address the baseline adjustments required under §§ 80.216(a)(2) and 80.240(d) for GPA and small refiners.[11] However, as currently written, § 80.415(a)(3) suggests that *any* refiner or importer who generates early credits in 2000 through 2003 must adjust its baseline if the refinery's or importer's annual average sulfur content in any year in which early credits were generated was less than the refinery's or importer's baseline. This would mean that early credits generated in a subsequent year would be based on reductions from an adjusted baseline level rather than the refinery's actual baseline level. However, the regulations do not require such an adjustment for non-GPA or non-small refiners. For *any* annual averaging period from 2000 through 2003, early credits and allotments are generated based on reductions from the refinery's 1997–1998 sulfur baseline. *See* § 80.305. If, for example, a refinery generates credits in 2002 by producing gasoline that is 10 percent lower in sulfur content than its 1997–1998 baseline, the refinery does not have to produce even cleaner gasoline in 2003 to generate credits. Credit generation in 2003 would also be based on reductions from the refinery's 1997–1998 sulfur baseline.

As a result, today's rule revises the attest provisions to clarify that the requirements of § 80.415(a)(3) only apply to attest reports for small refiners that are subject to the baseline adjustment requirements under § 80.240(d), and GPA refiners that are subject to the adjustment provisions under § 80.285(b)(1)(ii) for purposes of credit generation beginning in 2004. Today's rule also clarifies that the attest requirements for small refiners in § 80.415(a)(4) apply to attest reports in 2004 through 2007. In addition, § 80.415(a) has been renumbered to provide better organization of these provisions.

Today's rule also adds § 80.415(b)(6) to require the attest engagement to agree with the information in the refinery's or importer's batch reports filed with EPA under the RFG/conventional gasoline regulations, and the refinery's or importer's laboratory test results, with the information contained in the annual sulfur report required under § 80.370. This requirement is necessary to verify the information submitted in the annual report required under § 80.370. Omission of this requirement was an oversight in the final rule.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule 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 the rights and obligations of recipients thereof; or,
- 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, we have determined that this final rule is not a ''significant regulatory action.''

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 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 direct final rule on small entities, small entity is defined as: (1) A small business refiner that had no more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1998 to January 1, 1999; and a corporate crude capacity less than or equal to 155,000 barrels per calendar day for 1999[12]; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not have any adverse economic impact on small entities. Today's rule corrects, amends, and revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action corrects typographical errors and makes other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it modifies the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule modifies the GPA program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it allows an approved small refiner, under limited circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it amends certain provisions of the small refiner and ABT programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been

[11] Section 80.240(d) provides that, for any small refiner who generates early credits or allotments, the applicable small refinery baseline for purposes of establishing the small refinery's standard is the lowest annual average sulfur level for any year in which the refinery generated early credits or allotments. Section 80.216(a)(2) provides that any GPA refiner whose actual annual average sulfur level decreases to a level lower than the refinery's GPA standard during the period 2000 through 2003, the applicable GPA standard will be the lowest average sulfur level for any year in which the refinery generated early credits or allotments, plus 30 ppm, not to exceed 150.00 ppm. As discussed above in Section IV.A., today's rule deletes the provisions of § 80.216(a)(2).

[12] This definition of a small business refiner was established under the Tier 2 Rule. See § 80.225.

prepared by EPA (ICR No. 2073.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Certain small refiners may provide this requested information in order for EPA to consider granting specific relief relating to the gasoline sulfur requirements. This relief would be in the form of an adjustment to one of the gasoline sulfur standards that apply to small refiners, the per-gallon cap sulfur standard. The information will allow EPA to assess the need for such relief and to grant the appropriate relief based on the small refiner's situation. This information will be provided voluntarily by letter and will be treated by EPA as Confidential Business Information.

EPA estimates that between one and 5 small refiners may request an adjustment in their per-gallon cap sulfur standards, and that a one-time effort of about 2 hours will be required to prepare the application letter. We estimate the total industry-wide burden to be less than $1000. 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.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we 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 for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of correcting, amending, and revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

2. 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. The effect of today's rule is no more significant than the Tier 2 rule for tribes under the original provisions of the GPA program; under today's action, gasoline sold in certain tribal lands will be subject to a flat average standard of 150 ppm sulfur. Thus, Executive Order 13175 does not apply to this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have

federalism implications (i.e., the rules 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). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule clarifies and corrects certain provisions of an earlier rule that adopted national standards to control gasoline sulfur. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13211: Energy Effects

This 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) because it is not a significant regulatory action under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's rule are all voluntary consensus standards.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that 1) is determined to be ''economically significant'' as defined under Executive Order 12866, and 2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2002.

X. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls set in today's final rule comes from section 211(c) of the CAA (42 U.S.C. 7545(c)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Additional support for the procedural and enforcement-related aspects of the fuel controls in today's final rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.46:

a. Paragraph (a)(2) is revised as set forth below; and

b. Paragraph (h) is amended by adding after the phrase ''ASTM standard methods'' the phrase ''D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry'.''

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) * * *

(2) Beginning January 1, 2004, the sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

* * * * *

3. Section 80.195 is amended by revising paragraphs (b)(4) and (c)(4), and adding paragraphs (c)(5)(iii) and (c)(6) to read as follows:

§ 80.195 What are the gasoline sulfur standards for refiners and importers?

* * * * *

(b) * * *

(4) In 2005 only, the refinery or importer annual average sulfur standard may be met using allotments or credits as provided under § 80.275, or credits as provided under § 80.315. The same allotments used to demonstrate compliance with the corporate pool

average standard may be used by a refinery in the corporate pool toward a demonstration of compliance with the refinery average standard, or by an importer for demonstration of compliance with the importer average standard. Alternatively, some of the allotments may be used toward a demonstration of compliance with the refinery average standard by one refinery in the corporate pool and the remainder used by another refinery or refineries in the corporate pool.

(c) * * *

(4) The corporate pool average standards do not apply to approved small refiners subject to the gasoline sulfur standards under § 80.240.

(5) * * *

(iii) In the case of a refinery that is owned by a two or more parties that is not a joint venture under this paragraph (c)(5), the business entity consisting of the joint owners is the refiner of that refinery. One of the owners of such a refinery may include the refinery in its corporate pool for purposes of complying with the corporate pool average standards under this section, with the same requirements and limitations that apply under paragraph (c)(5)(ii) of this section.

(6)(i) A parent company is the refiner of any refinery facilities owned by the parent company's wholly-owned subsidiaries for purposes of compliance with the corporate pool average standards under this section.

(ii) A parent company must include in its corporate pool all of the gasoline produced at any refineries owned by the parent company and any refineries owned by the parent company's wholly-owned subsidiaries; or

(iii) A parent company may be deemed in compliance with the corporate pool average standards if the parent company includes in its corporate pool the gasoline produced by any refineries owned by the parent company, and each wholly-owned subsidiary of the parent company individually complies with the corporate pool average standards for the gasoline produced at the refineries owned by the wholly-owned subsidiary.

* * * * *

4. Section 80.205 is amended by revising the definition of S_a following the equation in paragraph (a) and removing paragraph (f) to read as follows:

§ 80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?

(a) * * *

Where:

S_a = The refinery or importer annual average sulfur level, or corporate pool average level, as applicable.

* * * * *

5. Section 80.210 is amended by adding paragraphs (e)(5), (e)(6) and (e)(7) to read as follows:

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

* * * * *

(e) * * *

(5) Gasoline from a terminal tank containing S–RGAS that is combined with gasoline from a terminal tank containing non-S–RGAS for the purpose of blending mid-grade gasoline in a transport truck may be classified on product transfer documents as S–RGAS, provided that the S–RGAS was combined with non-S–RGAS for the sole purpose of producing midgrade gasoline.

(6) Where S–RGAS is being delivered into a terminal storage tank containing non-S–RGAS which is simultaneously supplying gasoline to a transport truck, the terminal may identify the gasoline as S–RGAS before the delivery into the terminal tank is complete without performing the tests required in paragraph (d)(3) of this section. Upon completion of the delivery of S–RGAS into the terminal tank, the terminal may classify the gasoline as S–RGAS only if it meets the criteria for S–RGAS following testing in accordance with the requirements of paragraph (d)(3) of this section.

(7) The information relating to S–RGAS required to be included in product transfer documentation under this paragraph (e) must be included in the product transfer documents which accompany the transfer of custody of the gasoline. Product transfer documents that transfer title of the gasoline may fulfill the requirements under this paragraph (e) by indicating that the required information relating to S–RGAS is contained in the product transfer documents which accompany the transfer of custody of the gasoline.

* * * * *

6. Section 80.216 is amended by revising paragraphs (a) and (f) to read as follows:

§ 80.216 What standards apply to gasoline produced or imported for use in the GPA?

(a) The refinery or importer annual average sulfur standard for gasoline produced or imported for use in the geographic phase-in area under § 80.215, and designated as GPA gasoline under § 80.219(a), shall be 150.00 ppm.

* * * * *

(f)(1) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of more than 50 percent of gasoline designated as GPA gasoline under § 80.219(a) shall not be required to meet the corporate pool average standards under § 80.195 for its gasoline production or imported gasoline during the applicable averaging period.

(2) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of less than 50 percent of gasoline designated as GPA gasoline under § 80.219(a) must meet the corporate pool average standards under § 80.195 for all the refiner's gasoline production or the importer's volume of imported gasoline, including GPA gasoline, during the applicable averaging period.

* * * * *

7. Section 80.225 is amended by revising paragraph (a)(2) to read as follows:

§ 80.225 What is the definition of a small refiner?

(a) * * *

(2) For the purpose of determining the number of employees and crude capacity under paragraph (a)(1) of this section, the refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. A subsidiary under this paragraph means any subsidiary in which the refiner or parent company has a 50% or greater ownership interest.

* * * * *

8. A new § 80.271 is added to subpart H under the heading ''Allotment Trading Program'' to read as follows:

§ 80.271 How can a small refiner obtain an adjustment of its 2004–2007 per-gallon cap standard?

(a) EPA may in its discretion adjust the small refiner per-gallon cap sulfur standard established for a refinery under § 80.240(a) (the established small refiner per-gallon standard) if the refiner demonstrates that the burden of complying with the established small refiner per-gallon standard would effectively prevent the refiner from participating in the small refiner relief provided in § 80.240. No refiner will be eligible for an adjustment of its established per-gallon standard above 450 ppm. The refinery annual average sulfur standards in § 80.240(a) are not affected by this section.

(b) A refiner wishing to apply for such an adjustment of its established small refiner per-gallon sulfur standard under

§ 80.240(a) must send a letter to Gasoline Sulfur Program, U.S. EPA, Office of Transportation and Air Quality, 2000 Traverwood Dr., Ann Arbor, MI 48105 no later than January 1, 2003. Such application must include the following information:

(1) A detailed description of the nature of the difficulty that the per-gallon cap creates;

(2) The refiner's proposed adjusted per-gallon cap standard and the proposed duration for the adjustment, including an explanation of how a lower per-gallon cap standard or shorter duration would not address the hardship;

(3) The refiner's expected actual annual average sulfur level (i.e., prior to the use of any credits or allotments) for each year that the adjustment would be in effect;

(4) The refiner's estimate of the number of gallons of gasoline it produces that will exceed the established small refiner per-gallon standard under § 80.240(a) for each year that the adjusted per-gallon cap would apply; and

(5) The number of sulfur credits or allotments that the refiner estimates will be required under paragraph (d) of this section for each year that the adjusted per-gallon cap would apply and a plan for obtaining this number of credits or allotments.

(6) Other relevant information that EPA requests.

(c) EPA will evaluate each application for an adjusted per-gallon cap sulfur standard on a case-by-case basis. EPA may impose any reasonable conditions on adjustments granted under this section. EPA may in its discretion set forth the duration of the adjusted per-gallon cap sulfur standard but in no case shall it extend beyond December 31, 2007.

(d)(1) A small refiner with an adjusted per-gallon sulfur cap standard under paragraph (a) of this section must obtain and use sulfur credits or allotments to offset the amount that the adjusted standard exceeds the established small refiner per-gallon standard under § 80.240(a). The number of sulfur credits or allotments needed for each year that the adjusted per-gallon cap would apply is calculated on a per-batch basis according to paragraph (d)(2) of this section and summed over the averaging period.

(2) The formula for determining the number of sulfur credits or allotments that such a small refiner is required to use for any batch of gasoline exceeding the established small refiner per-gallon standard under § 80.240(a) is as follows:

$$CR_b = V_b \times (S_b - S_c)$$

Where:

CR_b = number of sulfur allotments or sulfur credits needed for the gasoline batch (ppm-gallons)

V_b = Volume of the gasoline batch (gallons)

S_b = Sulfur level of the gasoline batch (ppm)

S_c = Small refiner per-gallon cap standard established for that refinery under § 80.240(a), in ppm.

(3) Sulfur credits or allotments used when a small refiner exceeds an established per-gallon cap sulfur standard under § 80.240(a) must be separate from and in addition to credits or allotments used for any other purposes provided under § 80.275 or § 80.315.

(e) The approving official for an adjustment under this section is the Director of the Office of Transportation and Air Quality in the EPA Office of Air and Radiation.

9. Section 80.275 is amended by:

a. Revising paragraph (a)(1);

b. Revising the first equation and second equation in paragraph (a)(2)(i);

c. Revising the second equation in paragraph (a)(2)(ii);

d. Revising the equation in paragraph (a)(2)(v);

e. Adding paragraphs (b)(4), (e)(3), and (h); and

f. Redesignating paragraph (c)(2) as paragraph (c)(2)(i) and adding a new paragraph (c)(2)(ii).

The revisions and additions read as follows:

§ 80.275 How are allotments generated and used?

(a) * * *

(1) During 2003 only, any domestic or foreign refiner who produces gasoline from crude oil may have the option to generate credits in accordance with the provisions of § 80.305 or generate allotments and credits under paragraph (a)(2) of this section.

(2) * * *

(i) * * *

$$SA_{TypeB} = (30 - Sa) \times V$$

$$SA_{TypeA} = V \times 90$$

* * * * *

(ii) * * *

$$SA_{TypeA} = (S_{Base} - 30) \times V$$

* * * * *

(v) * * *

$$SA_{TypeA} = ((S_{Base} - S_a) \times V) \times 0.8$$

* * * * *

(b) * * *

(4) Oxygenate blenders may not generate allotments under this section.

* * * * *

(c) * * *

(2) * * *

(ii) Small refiners subject to the standards under § 80.240 and that have received an adjustment of their per-gallon cap sulfur standards pursuant to § 80.271(a) may also use sulfur allotments to meet the requirements of § 80.271(d)(1) for any refinery that has received such an adjustment.

* * * * *

(e) * * *

(3) Allotments generated in 2003 or 2004 which are carried over to 2005 are discounted by 50 percent. The discounted allotments may be used to demonstrate compliance with the corporate pool average standard in 2005, or they may be converted into credits for use in demonstrating compliance with the refinery average standard in 2005, or in a subsequent averaging period, in accordance with the provisions of this paragraph (e). Any allotments generated in 2003 or 2004 that are converted into credits before being carried over to 2005 are not discounted. Any allotments generated in 2003 or 2004 that are converted into credits before being carried over to 2005 may be reconverted into allotments for use in demonstrating compliance with the corporate pool average standard in 2005, but such reconverted allotments are discounted by 50 percent.

* * * * *

(h) Allotments and credits under this program are in units of ''ppm-gallons''.

* * * * *

10. Section 80.285 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 80.285 Who may generate credits under the ABT program?

* * * * *

(b) * * *

(1) * * *

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the least of 150 ppm, or the refinery's or importer's 1997–1998 sulfur baseline calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments (for any party generating credits under both paragraphs (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

* * * * *

11. Section 80.305 is amended by adding a new paragraph (f) to read as follows:

§ 80.305 How are credits generated during the time period 2000 through 2003?

* * * * *

(f) For gasoline produced during the year 2000, the averaging period for

credits generated in accordance with paragraph (a) of this section may be less than the full calendar year. Such partial-year averaging period will begin with the first full month for which all applicable sampling, testing, and documentation requirements are met.

12. Section 80.310 is amended by:

a. Revising paragraph (a);

b. Revising the equation in paragraph (b);

c. Removing the definition of S_{std} and adding a definition of S_{Credit} in its place following the equation in paragraph (b); and

d. Adding paragraph (d).

The revisions and additions read as follows:

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than 30 ppm; or, for refiners that are subject to the small refiner standards in § 80.240, the small refiner annual average sulfur standard applicable to that refinery; or, for refiners and importers subject to the GPA standards in § 80.216, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

(b) * * *

$$CR_a = V_a \times (S_{Credit} - S_a)$$

* * * * *

S_{Credit} = 30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

* * * * *

(d) Refiners and importers of GPA gasoline may generate credits under this section only if the annual average sulfur level for the gasoline produced or imported during the annual averaging period is less than 0.90 of the refinery's or importer's sulfur level as calculated under § 80.295.

13. Section 80.315 is amended by revising the introductory text of paragraphs (a) and (b)(1) to read as follows:

§ 80.315 How are credits used and what are the limitations on credit use?

(a) Credit use. Credits may be used to meet the applicable refinery or importer annual average sulfur standards under § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of itsper-gallon cap standard pursuant to § 80.271(a), provided that:

* * * * *

(b) Credit transfers. (1) Credits obtained from other persons may be used to meet the annual average standards specified in § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of itsper-gallon cap standard pursuant to § 80.271(a), if all the following conditions are met:

* * * * *

14. Section 80.365 is amended by revising paragraph (d)(2) to read as follows:

§ 80.365 What records must be kept?

* * * * *

(d) * * *

(2) Early credits and allotments. (i) Where the party generating the credits or allotments does not transfer the credits or allotments, records must be kept for 5 years from the date of creation, use, or termination, whichever is later.

(ii) Where early credits or allotments are transferred, records relating to such credits or allotments shall be kept by both parties for 5 years from the date the credits or allotments were transferred, used, or terminated, whichever is later.

* * * * *

15. Section 80.370 is amended by revising paragraph (a)(4) and adding new paragraphs (a)(7)(v), (c)(4) and (c)(5) to read as follows:

§ 80.370 What are the sulfur reporting requirements?

* * * * *

(a) * * *

(4) The annual average sulfur level of the gasoline produced or imported;

* * * * *

(7) * * *

(v) For any batch of small refiner gasoline produced by any refinery with an adjustment of its per-gallon cap standard under § 80.271(a), the number of sulfur credits or allotments required under paragraph (d)(1) of this section, the number of credits or allotments used, and the source(s) of these credits or allotments.

* * * * *

(c) * * *

(4) A parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section any refinery facilities owned by the parent company, any subsidiaries wholly-owned by the parent company, and any refinery facilities of the parent company's wholly-owned subsidiaries, except as provided in paragraph (c)(5) of this section.

(5) Where the wholly-owned subsidiaries of a parent company comply with the corporate pool average standards individually pursuant to § 80.195(c)(6)(ii):

(i) The corporate pool average reports required under paragraph (c)(1) of this section must be submitted by each wholly-owned subsidiary of the parent company;

(ii) Each wholly-owned subsidiary of the parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section the subsidiary's parent company and any refinery facilities of the subsidiary; and

(iii) The parent company must submit the corporate pool average reports required under paragraph (c)(1) of this section for any refinery facilities owned by the parent company which are not the refinery facilities of the parent company's wholly-owned subsidiaries.

* * * * *

16. Section 80.385 is amended by revising paragraph (b) and adding a new paragraph (g) to read as follows:

§ 80.385 What acts are prohibited under the gasoline sulfur program?

* * * * *

(b) Cap standard violation. Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standard under § 80.195, § 80.216, § 80.210, § 80.220, § 80.240, or does not comply with an adjusted cap standard approved for a small refiner under § 80.271.

* * * * *

(g) Failure to use sufficient sulfur credits or allotments to offset a per-gallon cap adjustment. For a small refiner that has an approved adjustment of its per-gallon cap sulfur standard for a refinery under § 80.271, to fail to obtain (or generate) and use the required number of sulfur credits or allotments to offset the revised per-gallon cap sulfur standard under § 80.217(d).

17. Section 80.395 is amended by revising paragraphs (a)(5), (a)(6), and (a)(12), and adding a new paragraph (a)(13) to read as follows:

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) * * *

(5) GPA use violation. Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385(f) occurred, is deemed in violation of § 80.385(f).

(6) Causing a GPA use violation. Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(c).

* * * * *

(12) Joint venture and joint owner liability. Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or is committed by the joint venture operation or any of the joint owners of the facility.

(13) Failure to use credits violation. Any small refiner that has an approved adjustment of its per-gallon cap under § 80.271 and that does not obtain (or generate) and use the required number of sulfur credits or allotments under § 80.271(d) by the time it submits its annual report under § 80.370 is deemed in violation of § 80.385(g).

* * * * *

18. Section 80.405 is amended by adding a new paragraph (e) to read as follows:

§ 80.405 What penalties apply under this subpart?

* * * * *

(e) Any person liable under § 80.395(a)(13) for failing to obtain (or generate) and use the total required number of sulfur credits or allotments under § 80.271(d) for a calendar year is subject to a separate day of violation for each day until the required number of credits or allotments is used.

19. Section 80.410 is amended by revising paragraph (h)(7)(ii) to read as follows:

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having an individual small refiner sulfur baseline, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

* * * * *

(h) * * *

(7) * * *

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130, § 80.415 and this paragraph (h); and

* * * * *

20. Section 80.415 is amended by;

a. Adding paragraphs (a)(2)(iii), (a)(2)(iv), and (b)(6);

b. Removing paragraphs (a)(4) and (a)(5); and

c. Revising paragraphs (a)(3) and (g)(4).

The additions and revisions read as follows:

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

* * * * *

(a) * * *

(2) * * *

(iii) If the annual average sulfur level for any year in which credits were generated for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section, for small refiners report as a finding the lowest annual sulfur level as the new baseline value for purposes of establishing the small refiner standards under § 80.240, and for GPA gasoline report as a finding the lowest annual sulfur level as the new sulfur level for purposes of credit generation under § 80.310, if lower than 150.00 ppm.

(iv) If the refinery being reviewed is a small refinery and the annual volume under paragraph (b)(2) of this section is greater than the baseline volume, calculate the applicable standard in accordance with § 80.240(c).

(3) Obtain a written representation from the company representative stating the sulfur value that the company used as its baseline and agree that number to paragraphs (a)(1) and (a)(2) of this section and to the reports to EPA.

(b) * * *

(6) Agree the information in the refinery's or importer's batch reports filed with EPA under §§ 80.75 and 80.105, and any laboratory test results, with the information contained in the annual sulfur report required under § 80.370.

* * * * *

(g) * * *

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (g)(3) of this section that was resolved with credits, or the portion that was resolved with allotments in 2004 or 2005 only (compliance deficits for GPA gasoline cannot be carried forward).

* * * * *

[FR Doc. 02–13802 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0036; FRL–6835–6]

RIN 2070–AB78

Vinclozolin; Tolerance Revocations and Notice of Channels of Trade Provision Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the tolerances listed in the regulatory text for the fungicide vinclozolin (40 CFR 180.380) by revoking the tolerances in or on strawberries, stone fruits, cucumbers, and bell peppers. The Environmental Protection Agency previously published a notice proposing to revoke these four tolerances, subject to public comment, in the **Federal Register** on July 10, 2001 (FRL–67797–7). The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

The Food and Drug Administration (FDA) in a related notice published else where in this issue of the **Federal Register** is announcing the availability of a guidance document presenting FDA's policy on its planned enforcement approach for foods containing vinclozolin residues. This guidance will assist firms in understanding the types of showing under 408(1)(5) of the FFDCA (hereinafter referred to as the channels of trade provision) that FDA may find satisfactory in accordance with its planned enforcement approach for such section. EPA and FDA are cooperating on this effort.

DATES: This final rule is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0036, must be received by EPA on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please

follow the detailed instructions for each method as provided in Unit III. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0036 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Deanna Scher, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–7043; and e-mail address: scher.deanna@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	111 112 311 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_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 ID number OPP–2002–0036. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes the FFDCA tolerances for residues of the fungicide vinclozolin in or on strawberries, stone fruits, cucumbers, and bell peppers. In the **Federal Register** of July 10, 2001 (66 FR 35921) (FRL–6779–7), EPA issued a proposed rule to revoke the tolerances listed in this final rule and invited public comment for consideration and for support of tolerance retention under FFDCA standards. No comments were received by the Agency during the 60–day comment period. The revocation is effective on the date of publication of this final rule.

On July 30, 1998, EPA published a notice in the **Federal Register** (63 FR 40710) (FRL–6020–9) announcing BASF Corporation's request to cancel the FIFRA registered uses for the pesticide vinclozolin on strawberries and stone fruits. These cancellations were precipitated by EPA's determination that aggregate exposure to vinclozolin exceeded the safety standard under FQPA. The notice informed the public of how it could comment on the request for cancellation. One comment was received from the California Strawberry Commission; this comment was fully addressed in a subsequent **Federal Register** notice (63 FR 59557) (FRL–6041–7) published on November 4, 1998 which announced the approval, with one minor change, of the proposed existing stocks provision for products containing vinclozolin. Under limitations on the use of existing stocks, the application of the pesticide vinclozolin on strawberries and stone fruit became unlawful after January 30, 2000. Therefore, no domestically treated commodities covered by these tolerances are expected to be in the channels of trade. No person has provided comments identifying a need for EPA to retain the tolerances to cover residues in or on imported strawberries or stone fruits.

On May 31, 2000, BASF Corporation requested that EPA revoke the import tolerances for cucumbers and bell peppers, as part of a risk mitigation proposal designed to address dietary and aggregate risk concerns identified during reregistration review. BASF requested that EPA revoke the established import tolerances for bell peppers and cucumbers not before January 1, 2001. These mitigation measures allowed the Agency to determine that the use of vinclozolin, with the amendments proposed by the registrant, would meet the safety standard of the Food Quality Protection Act (FQPA). Vinclozolin is not registered for use on bell peppers and cucumbers in the United States. No person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported cucumbers or bell peppers.

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

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. 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 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.

C. When do These Actions Become Effective?

These actions become effective on June 12, 2002. Any commodities listed in the regulatory text of this document that are treated with vinclozolin, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), the ''channels of trade provision'' as established by the FQPA. Under this section, any residue of vinclozolin in or on such commodities shall not render the commodities adulterated so long as it is shown to the satisfaction of 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 a tolerance. The channels of trade provision allows for the orderly marketing of foods that may currently contain legal residues resulting from lawful applications of vinclozolin.

D. What Action is FDA Taking with Respect to the Tolerance Revocation?

The FDA in a related notice published elsewhere in this issue of the **Federal Register** is announcing the availability of a guidance document presenting FDA's policy on its planned enforcement approach for foods containing vinclozolin residues. This guidance will assist firms in understanding the types of showing under section 408(l)(5) of the FFDCA that FDA may find satisfactory in accordance with its planned enforcement approach for such section.

E. 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 May 15, 2002, EPA has reassessed over 4,570 tolerances. This document revokes four vinclozolin tolerances; however, the reassessments were previously counted in 1997 when all vinclozolin tolerances were reassessed in order to make a decision on a new tolerance petition. Consequently, no further vinclozolin reassessments, including these four revocations, count towards the August, 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

III. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0036 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0036, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule will revoke 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 final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and LowIncome 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 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, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 20, 2002.

Marcia E. Mulkey,

Director, 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 371.

2. Section 180.[380] is amended by removing from the table in paragraph (a) the entries for ''cucumbres'', ''peppers (bell)'', ''stonefruits, except plums/fresh prunes'' and ''strawberries'', and by adding paragraph (e) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

* * * * *

(e) *Revoked tolerances subject to the channel of trade provisions.* The following table lists commodities with residues of vinclozolin resulting from lawful use are subject to the channels of trade provisions of section 408(l)(5) of the FFDCA:

Commodity	Parts per million
Cucumbers	1.0
Peppers (bell)	3.0
Stonefruits, except plums/fresh prunes	25.0
Strawberries	10.0

[FR Doc. 02–13520 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0082; FRL–7180–8]

Triflusulfuron Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of triflusulfuron methyl in or on beet, sugar, roots; beet, sugar, tops; and chicory, roots. Interregional Research Project #4 (IR-4) and E. I. Dupont de Nemours & Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0082, must be received on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0082 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins or Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 305–5697 or (703) 308–9368; e-mail address: tompkins.jim@epa.gov or jamerson.hoyt@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:

TABLE 1.—EXAMPLES OF POTENTIALLY AFFECTED ENTITIES

Cat-egories	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 persons 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. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0082. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 22, 1999 (64 FR 71760) (FRL–6391–1) and August 8, 2001 (66 FR 41593) (FRL–6795–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP) by IR-4 and E. I. Dupont de Nemours & Company, 681 US Highway #1 South North Brunswick, NJ 08902–3390, and E.I. DuPont de

Nemours & Company, DuPont Agricultural Products, Barley Mill Plaza, Wilmington, DE 19880–0038. This notice included a summary of the petition prepared by E.I. DuPont de Nemours, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.492 be amended by establishing a tolerance for residues of the herbicide, triflusulfuron methyl, methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate, in or on chicory, root at 0.05 parts per million (ppm) (PP 0E6214). PP 4F4278 proposed that the currently established time-limited tolerances for sugar beet, root at 0.05 ppm and sugar beet, top at 0.05 ppm be converted to permanent tolerances and to revise the commodities to read beet, sugar, roots at 0.05 ppm and beet, sugar, tops at 0.05 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of triflusulfuron methyl on chicory, root at 0.05 ppm; and to convert the time-limited tolerances for beet, sugar, root at 0.05 ppm and beet, sugar, top at 0.05 to permanent tolerances. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triflusulfuron methyl are discussed in Table 2 of this unit, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 2.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study type	Results
870.3100	90–Day oral toxicity rodents (two studies submitted)	NOAEL = 6.56/7.71 (m/f) mg/kg/day (milligram/kilogram/day) LOAEL = 133/153 (m/f) mg/kg/day based on decreased body weight gain and food efficiency in males; increased incidence of histopathological changes (kidney and spleen) in females. NOAEL = 6.20/7.54 (m/f) mg/kg/day LOAEL = 127/150 (m/f) mg/kg/day; based on decreased mean body weight gain, decreased mean food consumption (f), decreased mean food efficiency, alterations in hematology parameters (m); hemosiderin in kidneys (f)
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 3.9/3.7 (m/f) mg/kg/day LOAEL = 146.9/159.9 (m/f) mg/kg/day based on decreased mean body weight and body weight gain, decreased hematocrit, hemoglobin, RBC's, SGOT, SGPT, ALP, absolute and relative liver and testes weight; microscopic abnormalities of the liver and testes.
870.3200	21/28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day LOAEL = 1,000 mg/kg/day based on limit dose.
870.3700a	Pre-natal developmental in rodents	Maternal NOAEL = 120 mg/kg/day LOAEL = 350 mg/kg/day based on decreased body weight gain, decreased food consumption and lower food efficiency. Developmental NOAEL = >1,000 mg/kg/day limit dose LOAEL = >1,000 mg/kg/day.
870.3700b	Pre-natal developmental in nonrodents	Maternal NOAEL = 90 mg/kg/day LOAEL = 270 mg/kg/day based on clinical signs including absent/reduced stool and stained fur, maternal death, increased abortions, decreased body weight gain, and lower-food efficiency. Developmental NOAEL = 90 mg/kg/day LOAEL = 270 mg/kg/day based on increased abortions.

TABLE 2.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study type	Results
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 5.81/7.75 (m/f) mg/kg/day LOAEL = 44/58 mg/kg/day based on decreased body weight, decreased body weight gain, decreased food consumption, and decreased-food efficiency. Reproductive NOAEL = 89.5/115 (m/f) mg/kg/day based on the absence of reproductive effects at the highest dose tested (HDT). LOAEL = >115 mg/kg/day. Offspring NOAEL = 5.81/7.75 (m/f) mg/kg/day LOAEL = 44/58 (m/f) mg/kg/day based on decreased F1 pup body weight on days 14 and 21 due to exposure via milk and in the diet.
870.4100a	Chronic toxicity rodents	NOAEL = 2.44 mg/kg/day LOAEL = 30.6 mg/kg/day based on decreased body weight and body weight gain, alteration in hematology (mainly males) and increased incidences of interstitial cell hyperplasia in testes.
870.4100b	Chronic toxicity dogs	NOAEL = 26.9 mg/kg/day LOAEL = 116.6 mg/kg/day based on increased liver weight, alkaline phosphatase, and hepatocellular hypertrophy.
870.4200	Carcino-genicity rats	NOAEL = 2.44 mg/kg/day LOAEL = 30.6 mg/kg/day based on decreased body weight and body weight gain, alteration in hematology (mainly males) and increased incidences of interstitial cell hyperplasia in the testes. (Possible) evidence of carcinogenicity
870.4300	Carcino-genicity mice	NOAEL = 14.6 mg/kg/day LOAEL = 349 mg/kg/day based on increased liver weight and increased hepatic cell tumors (adenomas and/or carcinomas combined. (Possible) evidence of carcinogenicity
870.5100	Gene Mutation	No genotoxic effect in Ames assay using S. typhimurium. (two studies)
870.5375	Cytogenetics	No genotoxic effect in Chinese hampster ovary (CHO) gene mutation assay
870.5375 870.5395	Other Effects	Positive effects in the presence of metabolic activation, but inconclusive in the absence of metabolic activation in a chromosomal aberration/human lymphocyte study. Mouse micronucleus assay negative for genotoxic effects.
870.6200a	Acute neurotoxicity screening battery	NOAEL = >2,000 mg/kg/day HDT LOAEL = Not established
870.6200b	Subchronic neurotoxicity screening battery	NOAEL = 92.7/7.1 (m/f) mg/kg/day LOAEL = 186.2/51.6 (m/f) mg/kg/day based on decreased body weight and body weight gain.
870.7485	Metabolism and pharmacokinetics	Urine major route of excretion at low doses and the feces at high doses. *N*-desmethyl triflusulfuron methyl, the upper urinary metabolite composed between 25–44% of the dose at the low dose level (single and repeated). Parent was the major component in the high dose feces and liver.
870.7600	Dermal penetration	No dermal absorption studies were available. A 27% absorption was calculated from a ratio of the LOAEL from a developmental and 21–day dermal toxicity studies in rabbits.
	Special studies: *In vivo* and *in vitro* mechanic studies	The purpose of these studies was to investigate the mechanism of Leydig cell tumor induction in the testes of male rats. A dose-dependent decrease in aromatase enzyme activity was seen *in vitro*, but was inconclusive *in vivo*.

B. Toxicological Endpoints

The dose at which no adverse effects are observed, the NOAEL, from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified, the LOAEL, is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/

UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer}= point of departure/exposures) is calculated. A summary of the toxicological endpoints for triflusulfuron methyl used for human risk assessment is shown in Table 3 of this unit:

TABLE 3.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLUSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and LOC for risk assessment	Study and toxicological effects
Acute Dietary (all population subgroups)	N/A		No toxicological effects attributable to a single exposure (dose) were observed in oral toxicity studies. Therefore, an acute RfD can not be established and an acute dietary risk assessment will not be conducted for the general population.
Chronic Dietary (all populations)	NOAEL = 2.44 mg/kg/day UF = 100 Chronic RfD = 0.024 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.024 mg/kg/day	Chronic Toxicity in Rats LOAEL = 30.6 mg/kg/day based on decreased body weight and body weight gain, alter. In hematology (mainly males), increased incidence of interstitial cell hyperplasia in testes.
Cancer (oral, dermal, inhalation)			Triflusulfuron methyl is classified as a Group C—possible human carcinogen chemical.

* The reference to the FQPA safety factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Tolerances have been established (40 CFR 180.492) for the residues of triflusulfuron methyl in or on sugar beet, root and sugar beet, top. Risk assessments were conducted by EPA to assess dietary exposures from triflusulfuron methyl in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. There are no effects attributable to a single, oral dose of triflusulfuron methyl. Therefore, an acute dietary risk assessment was not conducted.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture 1989–1992 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and that 100% of the crop is treated. Because suitable data depicting residues of triflusulfuron methyl in drinking were not available for incorporation into the dietary exposure model, the dietary exposure estimates do not include potential exposure from drinking water. The dietary exposure is based on sugar beets, because chicory was not reported as being consumed in the 1989–1992 CSFII. Therefore, inclusion of chicory in the dietary analysis would not alter the exposure or risk estimates from those obtained from sugar beets. The cRfD or 0.024 mg/kg/day was determined where the NOAEL of 2.44 mg/kg/day is based on decreased body weight gain, alterations in hematology (mainly in males) and increases in the incidence of interstitial hyperplasia in the testes at the LOAEL of 30.6 mg/kg/day. A 100–fold UF for interspecies extrapolation and intraspecies variability was applied.

iii. *Cancer*. Triflusulfuron methyl is classified as a Group C—possible human carcinogen chemical and for the purpose of risk characterization the RfD approach should be used for quantification of human risk. This decision was based on evidence of statistically significant, dose related increases in the incidence of interstitial cell adenomas of the testes at two doses, as well as statistically significant positive trend for these tumors in male rats. The testicular interstitial cell adenomas observed in the rat were benign. There was no reported increased tumor incidences of any type in the female rat and the dosing was adequate for assessing the carcinogenic potential of triflusulfuron methyl. Evidence of a hormonal mechanism for development of these benign tumors in rats does exist, however, the data were suggestive but not conclusive. Although there was some evidence of clastogenic activity for triflusulfuron methyl, positive results were only seen with activation in human lymphocytes/chromosomal aberration assay. Triflusulfuron methyl is a member of a class of chemicals known as sulfonylureas. Of the 12

analogs structurally related to triflusulfuron methyl, three sulfonylureas have been associated with carcinogenicity in rodents. Primisulfuron methyl and prosulfuron are classified as Group D carcinogens (not classifiable as to human carcinogenicity). Only tribenuron methyl is classified as a Group C carcinogen (possible human carcinogen), however, a Q* for cancer risk assessment is not required because there is no evidence of genotoxicity and the increased incidence of mammary gland tumors is observed at doses which exceed the maximum tolerated dose. Therefore the RfD approach is appropriate for quantification of human cancer risk.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for triflusulfuron methyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of triflusulfuron methyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact, processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health LOCs.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to triflusulfuron methyl they are further discussed in the aggregate risk sections in Unit III. E.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of triflusulfuron methyl for acute exposures are estimated to be 0.42 parts per billion (ppb) for surface water and 0.5 ppb for ground water. The EECs for chronic exposures are estimated to be 0.005 ppb for surface water and 0.5 ug/L (micrograms/Liter) for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Triflusulfuron methyl is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Pre-natal and post-natal sensitivity*. There is no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies. No developmental toxicity was seen at the limit dose (1,000 mg/kg/day) in rats. In rabbits, developmental toxicity manifested as abortions in the presence of severe maternal toxicity (mortality, abortions, clinical signs, decreased body weight, and food efficiency). In the 2–generation reproductive toxicity study, the effects in the offspring (decreased pup body weight in F1 on days 14 and 21; late lactation) can be attributed to the decreases in body weights seen in the parental animals. In addition, this decrease was seen only in the F1 generation but not in the second generation. There is no indication for a developmental neurotoxicity study since no neuropathological or neurobehavioral effects in the acute or subchronic neurotoxicity studies were observed; no alteration of the fetal nervous system was observed; and no evidence of neurotoxicity was found in other studies in the data base.

3. *Conclusion*. The toxicity data base for triflusulfuron methyl is complete except for a 28–day inhalation (nose only) toxicity study. This study is of marginal value for the FFDCA determination because there are no residential uses of triflusulfuron methyl. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on these reasons, the FQPA Safety Factor for the protection of children has been removed (i.e. reduced to 1x.)

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water,

and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Because there are no effects attributable to a single, oral dose of triflusulfuron methyl is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to triflusulfuron methyl from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for infants <1 year, and <1% of the cPAD for children aged 1–6 years and children aged 7–12 years. There are no residential uses for triflusulfuron methyl that result in chronic residential exposure to triflusulfuron methyl. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLUSULFURON METHYL

Population Subgroup	cPAD mg/kg/day	% cPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.000011	<1	0.005	0.50	840
Female (13–50 years)	0.000009	<1	0.005	0.50	720
All infants (<1 year)	0.000040	<1	0.005	0.50	240
Children (1–6 years)	0.000025	<1	0.005	0.50	240

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

Triflusulfuron methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Triflusulfuron methyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Triflusulfuron methyl has been designated a Category C ''possible human carcinogen'' and does not require a separate cancer risk assessment. Because the RfD approach was determined appropriate for quanification of human cancer risk, the chronic aggregate risk assessment is sufficiently protective of human health.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to triflusulfuron methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate tolerance enforcement method is available in PAM II. The method extracts residues of triflusulfuron methyl in a buffered acetonitrile solution, cleans the extract on a phenyl solid-phase extraction cartridge, and quantitates residues on a HPLC/UV system.

B. International Residue Limits

There are no Canadian or Codex MRLs established for triflusulfuron methyl.

C. Conditions

Submission of a 28–day inhalation (nose only) toxicity study is required as condition of registration.

V. Conclusion

Therefore, the tolerances are established for residues of triflusulfuron methyl, methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate, in or on chicory, roots at 0.05 ppm; and time-limited tolerances for sugar beet, root at 0.05 ppm and sugar beet, top at 0.05 ppm are converted to permanent tolerances and redefined as beet, sugar, roots and beet, sugar, tops.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by the FQPA, any person may

file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0082 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0082, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any 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 OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not

require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: May 31, 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.

2. Section 180.492 is revised to read as follows:

§ 180.492 Triflusulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, triflusulfuron methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate in or on the raw agricultural commodities:

Commodity	Parts per million
Beet, sugar, roots	0.05
Beet, sugar, tops	0.05
Chicory, roots	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–14501 Filed 6–11–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0099; FRL–7182–1]

RIN 2070–AB78

Spinosad; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues/combined residues of spinosad in or on stored grains (barley, corn, oats, rice, sorghum/milo, and wheat). Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. The tolerance will expire on May 31, 2004. This time-limited tolerance is to permit the marketing of stored grains in accordance with the Experimental Use Permit (EUP) 62719-EUP-50 which is being issued concurrently.

DATES: This regulation is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0099, must be received on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0099 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: William G. Sproat, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8587; e-mail address: sproat.william@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_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0099. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of December 14, 2001 (66 FR 64819) (FRL–6813–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996 (Public Law 104–170), announcing the filing of a pesticide petition (PP 1G6348) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This notice included a summary of the petition prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.495 be amended by establishing a tolerance for residues of the insecticide spinosad, in or on stored grains (barley, corn, oats, rice, sorghum/milo, and wheat) at 1 part per million (ppm). The tolerance will expire on May 31, 2004. On the basis of the information furnished by Dow AgroSciences, an EUP has been issued for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This permit authorizes the use of 700 pounds of the insecticide on stored grains for 1 year in the States of Arkansas, Georgia, Indiana, Kansas, Oklahoma, Minnesota, and Montana.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of spinosad on stored grains (barley, corn, oats, rice, sorghum/milo, and wheat) at 1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spinosad are discussed in Unit III.A. of the **Federal Register** of September 23, 1999 (64 FR 51451) (FRL–6381–9).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10x to account for

interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for spinosad used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SPINOSAD FOR USE IN DIETARY EXPOSURE ASSESSMENT

Exposure Scenario	Dose (mg/kg/day)	Endpoint	Study
Acute dietary	None	No appropriate endpoint available; risk assessment not required	
Chronic dietary	NOEL = 2.68 UF = 100	Systemic toxicity	Chronic toxicity - dog
	FQPA SF = 1x	RfD = 0.027 mg/kg/day cPAD = 0.027 mg/kg/day	
Short-term (dermal)	None	No appropriate endpoint available. No dermal absorption expected based on lack of toxicity at 2,000 mg/kg/day as well as molecular structure and size.	
Intermediate-term (dermal)	None	No appropriate endpoint available. No dermal absorption expected based on lack of toxicity at 2,000 mg/kg/day as well as molecular structure and size.	
Long-term (dermal)	None	No appropriate endpoint available; use pattern does not indicate a need for this risk assessment.	
Inhalation (any time period)	None	The low toxicity, use pattern and application rate does not indicate a need for risk assessment via this route.	

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.
FQPA SF = Safety factor to account for enhanced sensitivity of infants and children as required by the FQPA of 1996
cPAD = Chronic Population Adusted Dose = RfD FQPA SF

EPA's FQPA Safety Factor Committee met on April 26, 1999, and recommended that the 10x Safety Factor to account for enhanced sensitivity of infants and children be reduced to 1x (i.e., removed). Thus, the chronic FQPA PAD is 0.027 mg/kg/day and is equivalent to the chronic RfD.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Spinosad is registered for use on a variety of agricultural commodities. Due to a section 18 use for control of Mediterranean fruit fly, tolerances for residues of spinosad have been established for all agricultural commodities not covered by other registrations. Risk assessments were conducted by EPA to assess dietary exposures from spinosad in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The 1989–92 data are based on the reported consumption of more than 10,000 individuals over three consecutive days, and therefore, represent more than 30,000 unique ''person days'' of data. Foods ''as consumed'' (e.g., apple pie) are linked to raw agricultural commodities and their food forms (e.g., apples-cooked/canned or wheat-flour) by recipe translation files internal to the DEEM software. Consumption data averaged for the entire U.S. population and within populationn subgroups for chronic exposure assessment, but are retained as individual consumption events for acute exposure assessment.

Dietary risk assessment incorporates both exposure and toxicity of a given pesticide. For acute and chronic assessments, the risk is expressed as a percentage of a maximum acceptable dose. This is the population adjusted dose (PAD), which EPA has concluded will result in no unreasonable adverse health effects. The PAD is the Reference Dose (RfD) divided by the FQPA 10x Safety Factor. Dietary risk is expressed as a percentage of the PAD. EPA is concerned when estimated dietary risk exceeds 100% of the PAD.

For chronic exposure and risk assessment, an estimate of the residue level in each food or food-form (e.g., orange or orange-juice) on the commodity residue list is multiplied by the average daily consumption estimate for that food/food form. The resulting residue consumption estimate for each food/food form is summed with the residue consumption estimates for all other food/food forms on the commodity residue list to arrive at the total average estimated exposure. Exposure is expressed in mg/kg body weight/day and as a percent of the cPAD. This procedure is performed for each population subgroup.

EPA notes that there is a degree of uncertainty in extrapolating exposures for certain population subgroups which may not be sufficiently represented in the consumption surveys (e.g., nursing and non-nursing infants or Hispanic females). Therefore, risks estimated for these subpopulations were included in representative populations having sufficient numbers of survey respondents (e.g., all infants or females 13–50 years).

In conducting the chronic dietary risk assessment, EPA made very conservative assumptions: 100% of the various agricultural commodities having spinosad tolerances will contain spinosad residues and those residues will be at the level of the established tolerance. The RfD used for the chronic dietary risk assessment is 0.027 mg/kg/day and is equivalent to the cPAD, since the 10x FQPA Safety Factor has been reduced to 1x. The chronic assessment for the final application rate on stored grains of 1 ppm results in risk estimates that are below EPA's level of concern for all population subgroups. The risk estimate for the population subgroup made up of children 1–6 years is 84.4% of the cPAD. Risk estimates for all other population subgroups are below the level of concern. EPA is not typically concerned with risk estimates that are less than 100% of the cPAD.

iii. *Cancer.* Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, a cancer risk assessment was not performed.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* Available data on spinosad show that the compound is not mobile or persistent, and therefore, has little potential to leach to ground water. Spinosad may however, contaminate surface water upon the release of water from flooded fields to the environment.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spinosad in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of spinosad.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure

to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to spinosad, they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS model, the EECs of spinosad for chronic exposures are estimated to be 0.092 part per billion (ppb) for surface water and is based on the application of spinosad to cole crops (0.13 lb ai/acre/application, 0.45 lb ai/acre/season). The EEC value is over 1,300 times less than the lowest DWLOC (Table 2). Drinking water is not expected to be a significant source of exposure.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Spinosad is currently registered for use on the following residential non-dietary sites: Conserve SC Turf and Ornamental (EPA Registration Number 62719–291) and Conserve Fire Ant Bait (EPA Registration Number 62719–291). Both products are registered for outdoor use only. The risk assessment was conducted using the following residential exposure assumptions: the turf/ornamental and fire ant bait uses may result in non-dietary ingestion of spinosad-treated plant material or soil by children. Half-life estimates for Spinosyn A on various plant foliage ranges from 1.6 to 16 days and is generally dependent on the amount of sunlight received on the plant surfaces. To calculate a quantitative risk from a potential ingestion of grass (in the absence of acute-term, short-term, or intermediate-term oral endpoints), EPA would need to default to the chronic dietary endpoint. This scenario would represent a child eating grass for > 6 months continuously. Based on the low application rate for spinosad on turf (0.41 lb a.i./acre), its non-systemic nature, its short half-life (especially in sunlight), and the rapid incorporation of spinosad metabolites into the general carbon pool, EPA believes that residues of spinosad on turf/ornamentals and soil after application would be low and decrease rapidly over time. EPA believes that it is inappropriate to perform a quantitative dietary risk representing a chronic scenario from children ingesting spinosad-treated plants or soil. Qualitatively, the risk from children's ingestion of plant or soil as a result of turf/ornamental and fire ant bait uses does not exceed EPA's level of concern.

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

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5574–7).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for spinosad and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be removed. This recommendation is based on: (1) The completeness of the toxicological data base, (2) no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure, and (3) no requirement for a developmental neurotoxicity study.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Acute aggregate risk consists of the combined dietary exposures from food and drinking water sources. The total exposure is compared to the acute RfD. An acute RfD was not

identified since no effects were observed in oral toxicity studies that could be attributable to a single dose. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute aggregate exposure to spinosad.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to spinosad from food will utilize 40.5 of the cPAD for the U.S. population, 44.2% of the cPAD for infants, and 84.4% of the cPAD for children 1 to 6 years. Based on the use pattern, chronic residential exposure to residues of spinosad is not expected. In addition, there is potential for chronic dietary exposure to spinosad in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—SUMMARY OF CHRONIC DIETARY EXPOSURE AND RISK AND DRINKING WATER LEVELS OF COMPARISON FOR SPINOSAD

Population Subgroup	Dietary Exposure, mg/kg/day[1]	% cPAD[2]	Maximum H_2O Exposure, mg/kg/day[3]	DWLOC,: µg/L[4]	EEC: µg/L[5]
U.S. population (total)	0.010946	40.5	0.016054	480	0.092
All infants	0.011932	44.2	0.015068	150	0.092
Children 1–6 yrs.	0.022793	84.4	0.004207	42	0.092
Children 7–12 yrs.	0.016020	59.3	0.01098	110	0.092
Females 13–50 yrs.	0.00988	36.6	0.01712	514	0.092
Males 13–19 yrs.	0.010599	39.3	0.016401	574	0.092
Males 20 + yrs.	0.008841	32.7	0.018159	635	0.092
Seniors 55 + yrs.	0.008552	31.7	0.018448	646	0.092

[1] Tier 3 dietary (food only) estimated exposure to spinosad.
[2] % cPAD = Dietary Exposure (mg/kg/day)/chronic RfD (mg/kg/day) FQPA Safety Factor.
[3] Maximum Water Exposure = cPAD (mg/kg/day) - Dietary Exposure (mg/kg/day).
[4] DWLOC = Maximum Water Exposure (mg/kg/day) body weight (70 kg males, 60 kg females, 10 kg children) water consumption (2 L/day adults, 1 L/day children) H 10^3 µg/mg. Values expressed to 2 significant figures.
[5] EEC = Values are Tier 2 chronic estimates for surface water.

3. *Short-term and intermediate-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of spinosad, no toxicological effects have been identified for short-term or intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Spinosad has been classified as ''not likely to be carcinogenic in humans'' based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats. Therefore, spinosad is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC or immunoassay) is available to enforce the tolerance expression. The method may be requested from: Dick Griffith, BEAD ACL (7503C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue limits have been established for residues of spinosad on any crops.

C. Conditions

This is a time-limited tolerance for the use of spinosad on stored grains at 1 ppm.

V. Conclusion

Therefore, a time-limited tolerance is established for residues of spinosad, in or on stored grains (barley, corn, oats, rice, sorghum/milo, and wheat) at 1 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions

provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0099 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0099, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any 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 OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: May 30, 2002.

Debra Edwards,

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.

2. Section 180.495 is amended by alphabetically adding the following commodity to the table in paragraph (a) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Stored grains (barley, corn, oats, rice, sorghum/milo, and wheat)	1.0	May 31, 2004
* * * * *		

* * * * *

[FR Doc. 02–14634 Filed 6–11–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0072; FRL–7178–1]

Carfentrazone-ethyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of carfentrazone-ethyl (ethyl-α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate) and carfentrazone-ethyl chloropropionic acid (α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on fruiting vegetables (except cucurbits) (crop group 8), tomato paste and tomato puree. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on fruiting vegetables (except cucurbits) (crop group 8). This regulation establishes a maximum permissible level for residues of carfentrazone-ethyl in these food commodities. These tolerances will expire and are revoked on June 30, 2004. This document also reinstates the commodity ''soybean seed'' which was inadvertently omitted in a previous revision published in the **Federal Register**.

DATES: This regulation is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0072, must be received on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0072 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0072. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the herbicide carfentrazone-ethyl, (ethyl-α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate) and carfentrazone-ethyl chloropropionic acid (α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on fruiting vegetables (except cucurbits) (crop group 8) at 0.10 part per million (ppm), tomato paste at 0.60 ppm, and tomato puree at 0.60 ppm. These tolerances will expire and are revoked on June 30, 2004. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

In the **Federal Register** of September 30, 1998 (63 FR 65078) (FRL–6032–1), the section for carfentrazone-ethyl was added to 40 CFR part 180. The commodity ''soybean seed'' was included at that time. In the **Federal Register** of August 9, 2000 (65 FR 48626) (FRL–6597–7), § 180.515(a) was revised and the commodity ''soybean seed'' was inadvertently omitted. This document will amend § 180.515(a) to add ''soybean seed.''

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Carfentrazone-ethyl on Fruiting Vegetables (Except Cucurbits) (Crop Group 8) and FFDCA Tolerances

Paraquat resistant nightshade (*Solanum spp.*), common groundsel (*Portulaca oleracea*), and morningglory (*Ipomoea spp.*) are difficult to control warm season, annual broadleaf weeds that reproduce by seeds. They have high reproductive potential and can be very competitive with tomatoes, peppers, or eggplant during crop establishment.

The alternative chemicals for postemergence control consist of paraquat, diquat, or Enquik (monocarbamide dihydrogen sulfate). Paraquat and diquat resistance, up to 20 fold (increase in rate), has been documented in nightshade species in Florida. Enquik is very corrosive and does not provide acceptable control of nightshade, common purslane, or morningglory. In fact the Enquik label recommends tank mixing with paraquat when used in tomatoes. The chemicals registered for preemergence control of broadleaf weeds in Florida consist of metribuzin, metolachlor, napropamide, and trifluralin. These herbicides do not control nightshade spp., common groundsel, or morningglory. Cultivation and hand weeding will destroy the plastic sheeting used under the crop. The State anticipates yield losses of tomatoes due to nightshade infestations can be greater than 10% compared to the next best alternative. Data from Purdue indicates yield loss averages 5–10% in tomatoes and heavy infestations can cause up to 50% yield loss.

Nightshade species and common groundsel also act as a secondary host for silverleaf whitefly and the pepper weevil both of which can vector Gemini viruses. The applicant says that yield losses due to viruses such as tomato motile virus and tomato yellow leafcurl virus can reduce yields up to 60% or more. Data from Texas in peppers indicates the pepper weevil can directly reduce yields by up to 50% due to the larvae feeding on the fruit. The Agency estimates that yield losses due to weeds and the insects they harbor can be in the range of 10 to 60%. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on fruiting vegetables (except cucurbits) (crop group 8) for control of nightshade, morningglory, and purslane in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of carfentrazone-ethyl in or on fruiting vegetables (except cucurbits) (crop group 8). In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2004, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on fruiting vegetables (except cucurbits) (crop group 8) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether carfentrazone-ethyl meets EPA's registration requirements for use on fruiting vegetables (except cucurbits) (crop group 8) or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of carfentrazone-ethyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for carfentrazone-ethyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of carfentrazone-ethyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of carfentrazone-ethyl, (ethyl-α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate) and carfentrazone-ethyl chloropropionic acid (α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) carfentrazone-ethyl, in or on fruiting vegetables (except cucurbits) (crop group 8) at 0.10 ppm, tomato paste at 0.60 ppm, and tomato puree at 0.60 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for carfentrazone-ethyl used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CARFENTRAZONE-ETHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (General population including females 13–50 years of age, infants, and children)	NOAEL = 500 mg/kg/day UF = 100 Acute RfD = 5 mg/kg/day	FQPA SF = 1 aPAD = acute RfD÷FQPA SF = 5 mg/kg/day	Acute neurotoxicity study in rats LOAEL = 1,000 mg/kg/day based on clinical observations (i.e., salivation) and decreased motor activity.
Chronic dietary (All populations)	NOAEL = 3 mg/kg/day UF = 100 Chronic RfD = 0.03 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD÷FQPA SF = 0.03 mg/kg/day	Two-year chronic toxicity study in rats. LOAEL = 12 mg/kg/day based on liver histopathology (increases in microscopic red fluorescence of the liver, liver pigment) and total mean urinary porphyrin.
Short-term incidental oral exposures (1 to 7 days)	NOAEL = 500 mg/kg/day	LOC for MOE = 100 (residential)	Acute neurotoxicity study in rats. LOAEL = 1,000 mg/kg/day based on clinical observations (i.e., salivation) and decreased motor activity.
Intermediate-term incidental oral exposures (1 week to several months)	NOAEL = 50 mg/kg/day	LOC for MOE = 100 (residential)	Subchronic oral toxicity study in the dog. LOAEL = 150 mg/kg/day based on decreased body weight gain and increased porphyrin levels.
Short-term dermal (1 to 7 days) and intermediate-term dermal (1 week to several months) (residential)	None	None	No systemic toxicity was seen at the limit-dose (1,000 mg/kg/day) in a 21–day dermal toxicity study in rats.
Long-term dermal (several months to lifetime) (residential)	None	None	None
Short-term inhalation (1 to 7 days) (residential)	Inhalation (or oral) study NOAEL= 500 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (residential)	Acute neurotoxicity study in rats. LOAEL = 1,000 mg/kg/day based on clinical observations (i.e., salivation) and motor activity changes
Intermediate-term inhalation (1 week to several months) (residential)	Inhalation (or oral) study NOAEL= 50 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (residential)	Subchronic toxicity study in dogs. LOAEL = 150 mg/kg/day based on decreased body weight gain and increased porphyrin levels
Long-term inhalation (several months to lifetime) (residential)	Inhalation (or oral) study NOAEL= 3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (residential)	Chronic toxicity study in rats. LOAEL = 12 mg/kg/day based on liver histopathology and increased urinary porphyrin levels.
Cancer (oral, dermal, inhalation)	Carfentrazone-ethyl has been classified as ''not likely'' to be a human carcinogen.	None	There was no evidence of carcinogenicity in either a mouse carcinogenicity study or a rat carcinogenicity study.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.515) for the combined residues of carfentrazone-ethyl, in or on a variety of raw agricultural commodities including corn, cereal grains, cotton, rice, soybeans and sorghum. Risk assessments were conducted by EPA to assess dietary exposures from carfentrazone-ethyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: 100% crop treated, tolerance level residues for all commodities, and DEEM® default processing factors for all registered and proposed commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated, tolerance level residues for all commodities, and DEEM® default

processing factors for all registered and proposed commodities.

iii. *Cancer*. Carfentrazone-ethyl has been classified as ''not likely'' to be a human carcinogen. Therefore, risk assessments to estimate cancer risk were not conducted.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for carfentrazone-ethyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of carfentrazone-ethyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparisons (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to carfentrazone-ethyl, they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models, the EECs of carfentrazone-ethyl for acute exposures are estimated to be 34.3 parts per billion (ppb) for surface water and 13.4 ppb for ground water. The EECs for chronic exposures are estimated to be 19 ppb for surface water and 13.4 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Carfentrazone-ethyl is currently registered for use on the following residential non-dietary sites: Ornamental lawns and turf, including residential and institutional lawns. Therefore, the Agency assessed the estimated exposure from non-dietary exposures. The Agency assessed the non-dietary incidental ingestion via hand-to-mouth exposure by a toddler as this scenario was anticipated to represent the highest exposure potential in the residential setting. Since dermal endpoints have not been selected, no residential post-application dermal assessment was conducted.

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

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

C. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

i. *Developmental toxicity studies*. In a developmental toxicity study in rats, body weight, body weight gain, food consumption, gross pathology, and cesarean section data were similar between control and treated groups. The maternal LOAEL is 600 mg/kg/day (based on staining of the abdominogenital area and of the cage pan liner) the maternal NOAEL is 100 mg/kg/day. Evaluation of litter data and an assessment of embryonic and fetal development, including litter size, post-implantation loss, fetal weights, and sex ratio, did not reveal any evidence of treatment-related toxicity. Examination of fetuses for alterations of external, visceral, and skeletal development revealed significantly increased litter incidences of wavy and thickened ribs in the 1,250 mg/kg/day treatment group. The developmental LOAEL is 1,250 mg/kg/day (based upon a significant increase in the litter incidences of wavy and thickened ribs); the developmental NOAEL is 600 mg/kg/day.

In a developmental toxicity study in rabbits, evidence of treatment-related maternal toxicity consisted of unthriftiness and emaciation in two does at 300 mg/kg/day. The maternal LOAEL is 300 mg/kg/day; the maternal NOAEL is greater than or equal to 150 mg/kg/day. There was no evidence of treatment-related prenatal developmental toxicity: The developmental LOAEL was not determined; the developmental NOAEL is greater than or equal to 300 mg/kg/day.

ii. *Reproductive toxicity study*. In a 2-generation reproduction study in rats, the parental systemic LOAEL is 4,000 ppm (equivalent to 343 mg/kg/day for males and 387 mg/kg/day for females) based on decreased body weight gains, increased liver weights, liver and bile

duct histopathology, and reductions in the mean cell volume (F_0 and F_1 males, F_1 females), mean cell hemoglobin (F_0 and F_1 males, F_1 females), hematocrit (F_1 males), and hemoglobin (F_1 males). The parental systemic NOAEL is 1,500 ppm (equivalent to 127 mg/kg/day for males and 142 mg/kg/day for females). The offspring LOAEL is 4,000 ppm (387 mg/kg/day) based on decreased pup body weights in both sexes of the F_2 generation. The offspring NOAEL is 1,500 ppm (142 mg/kg/day).

iii. *Prenatal and postnatal sensitivity.* The toxicity data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to carfentrazone-ethyl. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

2. *Conclusion.* There are no data gaps for the assessment of the effects of carfentrazone-ethyl following *in utero* and/or postnatal exposure. There is a complete toxicity data base for carfentrazone-ethyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to carfentrazone-ethyl. Based on the toxicity profile for carfentrazone-ethyl, a developmental neurotoxicity study in rats is not required. Therefore, the FQPA Safety Factor, for enhanced sensitivity to infants and children was reduced from 10X to 1X.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA's Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to carfentrazone-ethyl in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of carfentrazone-ethyl on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to carfentrazone-ethyl will occupy 1% or less of the aPAD for the U.S. population and all population subgroups represented in DEEM®. In addition, despite the potential for acute dietary exposure to carfentrazone-ethyl in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of carfentrazone-ethyl in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CARFENTRAZONE-ETHYL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	5	<1%	34.3	13.4	170,000
All infants (<1 year old)	5	<1%	34.3	13.4	50,000
Children (1–6 years old)	5	1%	34.3	13.4	50,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carfentrazone-ethyl from food will utilize 14% of the cPAD for the U.S. population, 10% of the cPAD for all infants less than 1 year old, and 34% of the cPAD for children 1–6 years old, the subpopulation with the greatest exposure. Based on the use pattern, chronic residential exposure to residues of carfentrazone-ethyl is not expected. In addition, despite the potential for chronic dietary exposure to carfentrazone-ethyl in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of carfentrazone-ethyl in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CARFENTRAZONE-ETHYL

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	14	19.0	13.4	900
All infants (< 1year old)	0.03	10	19.0	13.4	940
Children (1–6 years old)	0.03	34	19.0	13.4	690

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Carfentrazone-ethyl is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for carfentrazone-ethyl.

Using the exposure assumptions described in this unit for non-dietary exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 47,000 for children and 140,000 for infants for incidental oral exposure. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of carfentrazone-ethyl in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO CARFENTRAZONE-ETHYL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants (<1 year old)	140,000	100	19.0	13.4	170,000
Children (1–6 years old)	47,000	100	19.0	13.4	170,000

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of carfentrazone-ethyl, only endpoints have been identified for incidental oral exposures. Intermediate-term incidental exposures (1 week to several months) are not expected. Therefore, for intermediate-term exposures, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population*. Carfentrazone-ethyl has been classified as ''not likely'' to be a human carcinogen. Therefore, risk assessments to estimate cancer risk were not conducted.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to carfentrazone-ethyl residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (e g., gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican maximum residue limits, for residues of carfentrazone-ethyl and its metabolite in or on fruiting vegetables (except cucurbits) (crop group 8). Therefore harmonization is not issue.

C. Conditions

A maximum of 0.096 pounds of carfentrazone-ethyl per acre per year may be applied with a retreatment interval of 14 days. Rotational crop restrictions: treated fields may only be rotated to cotton, cereal grain, soybean, or a fruiting vegetable.

VI. Conclusion

Therefore, tolerances are established for combined residues of carfentrazone-ethyl, (ethyl-α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl)-4-fluorobenzenepropanoate) and carfentrazone-ethyl chloropropionic acid (α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on fruiting vegetables (except cucurbits) (crop group 8) at 0.10 ppm, tomato paste at 0.60 ppm, and tomato puree at 0.60 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.

The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0072 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP–2002–0072, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any 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 OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process

to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: May 31, 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.

2. In section 180.515 the tables in paragraphs (a) and (b) are amended by adding alphabetically the following commodities to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Soybean seed	0.1 ppm

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Tomato, paste	0.60 ppm	6/30/04
Tomato, puree	0.60 ppm	6/30/04
Vegetable, fruiting, group (except cucurbits)	0.10 ppm	6/30/04

* * * * *

[FR Doc. 02–14770 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0028; FRL–7180–6]

Carboxin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of carboxin (5,6-dihydro-2-methyl-*N*-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on onion, dry bulb. Uniroyal Chemical Company, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a(q), 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 47 reassessments toward the August 2002 deadline.

DATES: This regulation is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0028, must be received on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0028 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 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_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0028. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 29, 2000 (65 FR 16608) (FRL–6493–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of a pesticide petition (PP 9F3727) by Uniroyal Chemical Company, Inc., 74 Amity Road, Bethany, CT. This notice included a summary of the petition prepared by Gustafson LLC, the registrant. No comments were received in response to the notice of filing.

The petition requested that 40 CFR 180.301 be amended by establishing a tolerance for residues of the fungicide carboxin, 5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide and its sulfoxide metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide, each expressed as the parent compound, in or on onions (dry bulb) at 0.2 part per million (ppm).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of carboxin (5,6-dihydro-2-methyl-*N*-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) on onion, dry bulb at 0.2 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carboxin are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY DATA

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity in rats	NOAEL = Males: not identified; Females: 10 mg/kg/day LOAEL = Males: 10 mg/kg/day based on chronic nephritis, increased urea nitrogen, increased creatinine; Females: 40 mg/kg/day based on chronic nephritis
870.3200	21/28-Day dermal toxicity	Not available
870.3465	90-Day inhalation toxicity	Not available
870.3700	Prenatal developmental in rats	Maternal NOAEL = 10 mg/kg/day LOAEL = 90 mg/kg/day based on decreased body weights and body weight gain, decreased food consumption, and increased hair loss Developmental NOAEL = 175 mg/kg/day LOAEL = not identified
870.3700	Prenatal developmental in rabbits	Maternal NOAEL = 75 mg/kg/day LOAEL = 375 mg/kg/day based on increased abortions Developmental NOAEL = 75 mg/kg/day LOAEL = 375 mg/kg/day based on increased abortions
870.3800	Reproduction and fertility effects in rats	Parental NOAEL = Males and Females: 1 mg/kg/day LOAEL = Males: 10 mg/kg/day based on decreased body weight gains in F_1 parents, gross and histopathological changes in kidneys; Females: 15 mg/kg/day based on equivocal histopathological changes in kidneys Reproductive NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased fertility indices for F_{1b} parents due to decreased number of pregnancies for F_{2b} generation Offspring NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased body weights for F_{2b} male pups
870.4100	Chronic toxicity in dogs	NOAEL = Males: 16 mg/kg/day; Females: 1.3 mg/kg/day LOAEL = Males: 158 mg/kg/day based on decreased RBC, hematocrit and hemoglobin, increased MCH and MCV, increased alkaline phosphatase and cholesterol, increased liver weights; Females: 15 mg/kg/day based on decreased body weight gains
870.4200	Carcinogenicity in mice	NOAEL = Males: 752 mg/kg/day; Females: 9 mg/kg/day LOAEL = Males: not identified; Females: 451 mg/kg/day based on increased mortality Negative for carcinogenicity
870.4300	Combined chronic/carcinogenicity in rats	NOAEL = Males: 0.8 mg/kg/day; Females: 1.0 mg/kg/day LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys Negative for carcinogenicity
870.5100	Bacterial reverse mutation assay (Ames test)	Negative with or without S-9 activation at 5,000 μg/plate and less
870.5375	*In vitro* mammalian chromosome aberration (CHO cells)	Negative without S-9 activation Positive with S-9 activation. Highly significant increases in chromosomal aberrations at several toxic dose levels ranging from 400 to 1,400 μg/mL.
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Negative at all dose levels up to 48-hours post-dosing Study is unacceptable due to lack of clinical toxicity, lack of a multiple dosing schedule, and/or lack of evidence of transport to target tissue.
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Negative at all dose levels tested.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY DATA—Continued

Guideline No.	Study Type	Results
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Positive. Dose-related statistically significant increased percent of aberrant cells at ≥ 191 mg/kg/day.
870.5450	Dominant lethal assay in rats	Not available
870.5550	UDS in primary rat hepatocytes	Positive. Dose-dependent positive responses were observed at treatment levels from 5.13 to 103 µg/mL in the absence of moderate to severe toxicity.
870.7485	Metabolism and pharmacokinetics in rats	Following oral treatment of rats with [phenyl-UL-C^{14}] carboxin, approximately 78.3-81.1% and 77.0-81.5% of the low and high doses, respectively, were recovered. Urine was the major route of excretion. The major urinary metabolites were 4-acetamidophenol and its glucuronide, acetanilide, and hydroxylated carboxin sulfoxide.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for carboxin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CARBOXIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	Acute RfD = Not required	No toxicological endpoint attributable to a single exposure was identified	None
Chronic dietary all populations	NOAEL= 0.8 mg/kg/day UF = 100 Chronic RfD = 0.008 mg/kg/day	FQPA SF = 3 cPAD = Chronic RfD/FQPA SF = 0.00267 mg/kg/day	Combined chronic/carcinogenicity - rat LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys
Cancer (oral, dermal, inhalation)	Not likely to be carcinogenic to humans	Negative for carcinogenicity in rats and mice	Combined chronic/carcinogenicity - rat and carcinogenicity - mouse

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.301) for the combined residues or residues of carboxin and its sulfoxide metabolite, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from carboxin and its sulfoxide metabolite in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, an acute endpoint was not identified and an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary exposure analysis was an unrefined assessment. Tolerance level residues and 100% crop treated assumptions were used.

iii. *Cancer.* Carboxin was classified as ''not likely to be carcinogenic to humans.'' Therefore a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for carboxin and its sulfoxide metabolite in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of carboxin and its sulfoxide metabolite.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparisons (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to carboxin and its sulfoxide metabolite, they are further discussed in the aggregate risk sections in Unit E.

Based on the FIRST and SCI-GROW models, the EECs of carboxin and its sulfoxide metabolite for acute exposures are estimated to be 29.6 parts per billion (ppb) for surface water and 0.09 ppb for ground water. The EECs for chronic exposures are estimated to be 0.63 ppb for surface water and 0.09 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Carboxin is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The developmental toxicity and reproduction studies performed with carboxin did not indicate evidence for enhanced susceptibility to the fetuses/offspring of rats or rabbits. Neither quantitative nor qualitative increased susceptibility was observed in the developmental toxicity study in rats, the developmental toxicity study in rabbits, or the 2-generation reproduction toxicity study in rats. In none of the toxicity studies on carboxin was there any toxicologically significant evidence of treatment-related neurotoxicity. A developmental neurotoxicity study in rats is not required. There is, however, a concern for possible germinal cell toxicity.

In genotoxicity studies, carboxin demonstrated clear evidence of clastogenic potential. It was also noted

that in the 2-generation reproduction study in rats, treatment-related decreased fertility indices for the F_{1b} male and female parents (due to a decreased number of pregnancies for the F_{2b} generation) were observed. Based on these considerations, the registrant will be required to submit a germinal cell assay, specifically a dominant lethal assay in rats, to the Agency in order to evaluate possible interaction between carboxin and germinal cell targets.

3. *Conclusion*. Based upon clear evidence of clastogenic activity and the requirement for a dominant lethal study, EPA concluded that a FQPA safety factor of 3X is appropriate for this risk assessment. The safety factor of 10X was reduced to 3X because: (1) There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; (2) a developmental neurotoxicity study is not required; (3) the dietary (food and drinking water) exposure assessments will not underestimate the potential for exposures to infants and children; and (4) there are no registered residential uses for carboxin.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, carboxin is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carboxin and its sulfoxide metabolite from food will utilize 41% of the cPAD for the U.S. population and 92% of the cPAD for children 1-6 years, the most highly exposed population. There are no residential uses for carboxin. In addition, there is potential for chronic dietary exposure to carboxin and its sulfoxide metabolite in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CARBOXIN AND ITS SULFOXIDE METABOLITE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. populations	0.00267	41	0.63	0.09	56
Children 1-6 years	0.00267	92	0.63	0.09	2

3. *Short-term and intermediate-term risk*. Both short-term aggregate exposure and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Carboxin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern as described in Table 3 above.

4. *Aggregate cancer risk for U.S. population*. Carboxin was classified as ''not likely to be carcinogenic to humans.'' Therefore, carboxin is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of carboxin and its sulfoxide metabolite.

IV. Other Considerations

A. Endocrine Disruptor Effects

FQPA requires EPA to develop a screening program to determine whether certain substances (including all pesticides and inerts or inactive ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. In the available toxicity studies for carboxin, there is no evidence of endocrine disruptor effects. When appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, carboxin may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Enforcement Methodology

The current available enforcement methods for tolerances of the combined residues of carboxin and its carboxin sulfoxide metabolite are described in the Pesticide Analytical Manual (PAM) Vol. II. Method I is a colorimetric method which is used for determination of residues in or on corn, peanuts, rice, rice straw, sorghum, soybeans, eggs, meat, and milk. Method II and its modification, Method A, are GLC methods which are used for wheat, oats, barley, peanuts, peanut oil and meal, sorghum, cottonseed, and cottonseed oil and meal. Adequate recovery data were submitted to validate the methods used in the dry bulb onion field trials. Onions were analyzed by a modified version of Method II wherein carboxin and its metabolite are hydrolyzed to aniline, which was determined by GC/ECD.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, U.S. Environmental Protection Agency, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

C. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue levels for carboxin in/on onion seed. As a result, harmonization of tolerances is not an issue.

D. Conditions

Submission of a dominant lethal assay in rats will be required as a condition of registration due to the evidence of clastogenic potential for carboxin and its potential effect on male germinal cells.

V. Conclusion

Therefore, the tolerance is established for combined residues of carboxin, (5,6-dihydro-2-methyl-*N*-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on onion, dry bulb at 0.2 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0028 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0028, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any 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 OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: May 31, 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.

2. Section 180.301 is amended by alphabetically adding an entry for the commodity ''Onion, dry bulb'' to the table in paragraph (a); removing the text in paragraph (b); and reserving paragraph (b) with a heading to read as follows:

§ 180.301 Carboxin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Onion, dry bulb	0.2
* * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–14769 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0063; FRL–7180–5]

Triflumizole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on cucurbit vegetables, strawberries, sweet cherries, and tart cherries. Uniroyal Chemical Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. In addition, this regulatory action is part of the tolerance reassessment requirements of section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a(q), 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 26 reassessments toward the August 2002 deadline.

DATES: This regulation is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0063, must be received on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002-0063 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 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_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0063. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of July 6, 2001 (66 FR 35623) (FRL–6790–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the filing of pesticide petitions (PP) by Uniroyal Chemical Company, 74 Amity Road, Bethany, CT 06525. This notice included a summary of the petitions prepared by Uniroyal Chemical Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.476 be amended by establishing tolerances for residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole), in or on food commodities as follows:

1. PP 1F6297 proposed the establishment of tolerances for strawberries at 2.0 parts per million (ppm).

2. PP 0F6077 proposed the establishment of tolerances for the cucurbit crop group at 0.5 ppm.

3. PP 8F4938 proposed the establishment of tolerances for cherries at 2.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of triflumizole and its metabolites containing 4-chloro-2-trifluoromethylaniline moiety, expressed as the parent on cucurbit vegetables, strawberries, and cherries at 0.5 ppm, 2.0 ppm, and 1.5 ppm, respectively. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triflumizole are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents (rat)	NOAEL = Males: 15.3 mg/kg/day; Females: 17.2 mg/kg/day LOAEL = Males: 176.5 mg/kg/day; Females: 217.9 mg/kg/day based on increased kidney and liver weights and the accumulation of fat droplets in the liver.
870.3100	90-Day oral toxicity rodents (mouse)	NOAEL = Males: 33.1 mg/kg/day; Females: 42.6 mg/kg/day LOAEL = Males: 380.7 mg/kg/day; Females 466.2 mg/kg/day based on reduced growth.
870.3200	21/28-Day dermal toxicity (rat)	NOAEL ≥1,000 mg/kg/day LOAEL = not identified
870.3700	Prenatal developmental in rodents (rat)	Maternal NOAEL = 10 mg/kg/day LOAEL = 35 mg/kg/day based on decreased body weight gain and food consumption, and increased placental, spleen and liver weights. Developmental NOAEL = 10 mg/kg/day LOAEL = 35 mg/kg/day based on decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight, and increased incidences of cervical ribs.
870.3700	Prenatal developmental in nonrodents (rabbit)	Maternal NOAEL = 50 mg/kg/day LOAEL = 100 mg/kg/day based on decreased body weight gains, food consumption, and placental weights. Developmental NOAEL = 50 mg/kg/day LOAEL = 100 mg/kg/day based on decreased 24-hour survival, decreased placental weights, and increased fetal and litter incidences of lumbar ribs.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 8.5 mg/kg/day LOAEL = 21 mg/kg/day based on decreased body weight and overall body weight gain, increased relative liver weights, and increased mortality in females. Reproductive NOAEL = not identified LOAEL = 3.5 mg/kg/day based on increased gestation length in P. Offspring NOAEL = 8.5 mg/kg/day LOAEL = 21 mg/kg/day based on decreased pup body weight, survival indices, and litter sizes and a slight increased incidence of hydronephrosis in F_{1a} pups.
870.3800	Reproduction and fertility effects (rat)	Parental/Systemic NOAEL = 8.5 mg/kg/day LOAEL = not established Reproductive NOAEL = 1.5 mg/kg/day LOAEL = 3.5 mg/kg/day based on based on increased gestation length in dams of the F_{3a} interval. Offspring NOAEL = 3.5 mg/kg/day LOAEL = 8.5 mg/kg/day based on decreased pup weights, survival indices, and litter sizes in both F_3 litters, reduced litter size in the F_{1a} litter, increased total-litter mortality in the F_{3a} litter, and developmental effects in the F_{1b} and F_{2b} progeny.
870.4100	Chronic toxicity nonrodents (dog)	NOAEL = Males: 10.00 mg/kg/day; Females: 10.69 mg/kg/day LOAEL = Males: 34.10 mg/kg/day; Females: 35.17 mg/kg/day based on increased alkaline phosphatase activity and a mild, macrocytic anemia in males, increased absolute and relative liver weights in both sexes, and on macroscopic findings in the liver of both sexes.
870.4200	Carcinogenicity (mouse)	NOAEL = Males: 16.2 mg/kg/day; Females: 21.7 mg/kg/day LOAEL = Males: 67.4 mg/kg/day; Females: 86.1 mg/kg/day based on microscopic lesions of the liver. No evidence of carcinogenicity
870.4300	Combined chronic/oncogenicity (rat)	NOAEL = Males: <3.5-3.7 mg/kg/day; Females: <4.5-4.6 mg/kg/day LOAEL = Males: 3.5-3.7 mg/kg/day; Females: 4.5-4.6 mg/kg/day based on liver toxicity (eosinophilic foci in male rats and fatty vacuolation and inflammation and necrosis in female rats). No evidence of carcinogenicity.
870.5100	Bacterial reverse mutation	Negative with or without S9 activation at 5,000 µg/plate and less.
870.5100	Bacterial reverse mutation	Negative with or without S9 activation at 8,000 µg/plate and less.
870.5375	*In vitro* mammalian chromosome abberation (CHL)	Negative with or without S9.
870.5395	*In vitro* mammalian cytogenetics (mouse bone marrow)	Negative. Not clastogenic for the production of micronuclei in bone marrow polychromatic erythrocytes in mice at single oral doses up to 1,600 mg/kg.
870.5500	DNA damage/repair REC assay	Negative. No evidence of DNA damage up to 24,000 mg/disk. Study is unacceptable because a metabolic activation system was not used.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5550	UDS in primary rat hepatocytes	Negative. No evidence of unscheduled DNA synthesis up to cytotoxic concentrations.
870.6200	Acute neurotoxicity screening battery	Data gap
870.6200	Subchronic neurotoxicity screening battery	Data gap
870.7485	Metabolism and pharmacokinetics (rat)	Following oral treatment of rats with [phenyl-U-^{14}C]-NF-114, no sex-related differences were observed in absorption, metabolism, distribution or excretion. Maximum concentrations of radioactivity in plasma were attained within 1 hour of dosing in both sexes. Low levels of radioactivity were detectable in all tissue, organ, and blood samples. Radioactivity in urine accounted for 69.5-74.4% of the dose and feces accounted for 21.7-21.9% of the dose. Based on themetabolite profile, the metabolism in rats primarily involves oxidation to FM-8-1 and FA-1-5, followed by sulfation and glucuronidation.
870.7485	Metabolism and pharmacokinetics (rat)	Following oral treatment of rats with [phenyl-U-^{14}C]-NF-114, approximately 93.8-100.6% of the administered dose was recovered. Urine was the major route of excretion. Low levels of radioactivity were detectable in all tissue, organ, and blood samples collected 2 days (10 mg/kg group) or 4 days (300 mg/kg group) post-dose with tissue concentrations generally higher in males than females. The metabolite profile in the excreta was quantitatively and qualitatively similar between the sexes and dose groups. Based on the metabolite profile, the biotransformation of NF-114 in rats primarily involved oxidation of parent to FM-8-1 and FA-1-5, followed by conjugation yielding sulfate and glucuronic acid conjugates.
Special studies	Hepatic enzyme induction	The study provides evidence that triflumizole induces hepatic microsomal enzymes when administered orally. However, no correlation between the increased enzyme activities and hepatic lesions observed following chronic administration was made since no histopathology was performed.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences. Due to the lack of an acute neurotoxicity study and a subchronic neurotoxicity study, the Agency has applied an additional 3X uncertainty factor to this assessment to account for an incomplete toxicology data base.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A

summary of the toxicological endpoints for triflumizole used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLUMIZOLE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13-50 years of age	NOAEL = 10 mg/kg/day UF = 3X Acute RfD = 0.03 mg/kg/day	Special FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.03 mg/kg/day	Developmental Toxicity Study - Rat Developmental LOAEL = 35 mg/kg/day based on decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight, and increased incidences of cervical ribs.
Acute dietary general population including infants and children	No acute dietary endpoint of concern was chosen for the general population (including infants and children).		
Chronic dietary all populations	NOAEL = 1.5 mg/kg/day UF = 3X Chronic RfD = 0.005 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.005 mg/kg/day	Multi-generation Reproduction Study - Rat Reproductive LOAEL = 3.5 mg/kg/day based on increased gestation length in dams of the F_{3a} interval.
Short-term oral (1-30 days) (Residential)	oral NOAEL= 8.5 mg/kg/day	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation.
Intermediate-term oral (1-6 months) (Residential)	oral NOAEL= 8.5 mg/kg/day	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation and decreased body weight and body weight gain in parental animals.
Short-term dermal (1-30 days) (Residential)	oral NOAEL = 8.5 mg/kg/day (dermal absorption rate = 3.5%)	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation.
Intermediate- and long-term dermal (1-6 months and 6-month or longer) (Residential)	oral study NOAEL= 1.5 mg/kg/day (dermal absorption rate = 3.5%)	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 3.5 mg/kg/day based on increased gestation length in the dams of the F_{3a} interval.
Short-term inhalation (1-30 days) (Residential)	oral NOAEL= 8.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation.
Intermediate- and long-term inhalation (1-6 months and 6-month or longer) (Residential)	oral study NOAEL= 1.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 300 (includes the total FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 3.5 mg/kg/day based on increased gestation length in the dams of the F_{3a} interval.
Cancer (oral, dermal, inhalation)	evidence for non-carcinogenicity for humans	Not applicable	Combined Chronic Toxicity/Carcinogenicity Study - Rat Carcinogenicity Study - Mouse No evidence of carcinogenicity in rats and mice.

*The reference to the Special FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA. The total or overall FQPA Safety Factor includes both the Special FQPA Safety Factor and any traditional, additional safety, or uncertainty factors.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.476) for the combined residues of triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on a variety of raw agricultural commodities. The tolerance expression for meat, milk and poultry commodities also include residues of the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate. Risk assessments were conducted by EPA to assess dietary exposures from triflumizole and its metabolites in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary

Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A conservative, unrefined Tier 1 acute dietary exposure assessment was conducted for females 13-50 years old using tolerance level residues and modified DEEM processing factors for apples and grapes, based on the results of previously submitted processing studies. The Agency assumed 100% crop treatment for all other registered and proposed triflumizole food uses.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment, the (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially refined, Tier 3 chronic dietary assessment was conducted for the general U.S. population and all population subgroups (including infants and children) using anticipated residues, modified DEEM processing factors for apples and grapes based on the results of previously submitted processing studies, and average weighted percent crop treated information for apples, grapes, and pears.

iii. *Cancer*. Triflumizole is classified as a ''Group E'' (evidence of non-carcinogenicity in humans) chemical based on adequate studies in two species of animal. Therefore, a cancer dietary exposure assessment was not performed.

iv. *Anticipated residue and percent crop treated information*. Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. In conducting its chronic dietary risk assessment, EPA utilized PCT data for the registered uses on grapes, apples, and pears. EPA based these assumptions on use data for the period 1996 to 1997 and 1998 to 1999. For all other registered uses as well as the new uses (cucurbits, strawberries, and cherries), EPA assumed that 100% of the U.S. crop would be treated with triflumizole.

The Agency believes that the three conditions listed in Unit III.C. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which triflumizole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for triflumizole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of triflumizole.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a

coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to triflumizole, they are further discussed in the aggregate risk sections in Unit III.E.

Based on the FIRST and SCI-GROW models the EECs of triflumizole for acute exposures are estimated to be 191 parts per billion (ppb) for surface water and 0.12 ppb for ground water. The EECs for chronic exposures are estimated to be 40 ppb for surface water and 0.12 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Triflumizole is currently registered for use on the following residential non-dietary sites: Commercial applicators may treat ''woody'' ornamental species, such as trees, shrubs, and vines with triflumizole products. There are no proposed or registered uses for triflumizole on turf or lawns. EPA believes that residential, post-application, re-entry exposures from these use sites are not probable and, therefore, no residential exposure assessment has been conducted.

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

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

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats. Developmental toxicity resulted in fetal death as compared to maternal toxicity which included decreases in body weight gain and food consumption and increases in placental, spleen and liver weights at the same dosages.

No quantitative or qualitative evidence of increased susceptibility was demonstrated in the prenatal developmental toxicity studies in rabbits or the multi-generation reproduction studies in rats. In the rabbit developmental studies, 24-hour fetal survival was decreased at the highest dose tested. This endpoint is not a recommended guideline parameter and is generally believed to have limited value in the assessment of development toxicity; rather, it is more an indicator of fetal endurance in the absence of critical maternal care, following removal from the uterus. The Hazard Identification Assessment Review Committee did not consider this effect to be a measurement of treatment-related effects on fetal viability and, thus, did not consider it to be relevant to the assessment of fetal susceptibility. There was no evidence of quantitative or qualitative susceptibility in the 2-generation reproduction study in rats. In that study, increased gestation length was observed at the study LOAEL. In rats, this alteration in normal reproductive function can result in equally adverse consequences (i.e., mortality) in both dams and offspring.

3. *Conclusion*. The Agency has determined that a FQPA safety factor of 3X was safe for infants and children based upon the following considerations: (1) There was no quantitative or qualitative evidence of increased susceptibility in the rabbit fetuses following *in utero* exposure or the rat following prenatal and postnatal exposure; (2) while there was evidence of qualitative susceptibility in the developmental rat study, there are no residual uncertainties, and the use of the developmental NOAEL and the endpoint for the acute RfD for females 13-50 is protective of the prenatal toxicity following an acute dietary exposure; (3) while the toxicological data base is incomplete due to the lack of acute and subchronic neurotoxicity studies, the additional safety factor 3X is applied for acute and chronic dietary risk assessments to account for this uncertainty; and (4) in the exposure data base, there are no residual uncertainties identified. The drinking water exposure assessments incorporate conservative (Tier I) assumptions, and there are no residential exposures anticipated with the use of this chemical. The FQPA safety factor of 3X was found to be adequate based upon the following factors: (1) In the acute studies, clinical signs were seen at very high doses which resolved within 24 hours and no treatment-related effects were seen in the surviving animals; (2) in the chronic study, cholinesterase inhibition was seen during the first year, but not in a consistent manner; while plasma inhibition was seen in both sexes, erythrocyte was inhibited in males but not in females at the highest dose tested, no inhibition of brain cholinesterase activity was seen in either sex at any dose level; (3) there was no evidence of neurotoxicity in the subchronic studies in mice or rats; (4) there was no evidence of neuropathology in the data base; and (5) the doses used in risk assessments are significantly lower than the doses that induce the clinical signs following acute exposure or cholinesterase inhibition following repeated exposures.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to triflumizole will occupy 19% of the aPAD for females 13 years and older. No acute dietary endpoint was selected by EPA for the general U.S. population, including infants and children. Therefore, an acute dietary exposure assessment was not performed for these population subgroups. In addition, there is potential for acute dietary exposure to triflumizole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13-50 years	0.03	19	191	0.12	710

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to triflumizole from food will utilize 18% of the cPAD for the U.S. population and all population subgroups. The most highly exposed subpopulation is children 1-6 years old at 18% of the cPAD. There are no residential uses for triflumizole that result in chronic residential exposure to triflumizole. In addition, there is potential for chronic dietary exposure to triflumizole in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.005	8	40	0.12	160
All infants, <1 year old	0.005	11	40	0.12	45
Children, 1-6 years old	0.005	18	40	0.12	41

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

For triflumizole, the Agency did not perform short-term or intermediate-term assessments because there are currently no registered or proposed uses for homeowner application and residential post-application exposures are expected to be negligible.

4. *Aggregate cancer risk for U.S. population*. Since triflumizole has been determined to not be carcinogenic, it is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Suitable methods are available for collecting data on residues of triflumizole and its metabolites. For cucurbits, the Agency has determined that the GC/nitrogen/phosphorus detector (NPD) method (Uniroyal

Method CRM-3-96) is adequate for collecting data on residues of triflumizole and its metabolites. For strawberries, the GC/MSD (Morse Method METH-115, Revision #2) is adequate for collecting data on residues of triflumizole and its metabolites. For cherries, the GC/electron capture detection (ECD) method (Uniroyal Method CRM-3-96, modified) is adequate for data collection. For each of these commodities, the Agency has determined that a GC/nitrogen/phosphorus detector (NPD) method previously submitted to support petitions for the use of triflumizole on apples, grapes, and pears is similar to the above-referenced methods. This method is also acceptable as a tolerance enforcement method for these new commodities. This method has been forwarded to the Food and Drug Administration (FDA) for inclusion in the Pesticide Analytical Manual (PAM), Volume II, as Method I.

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, U.S. Environmental Protection Agency, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for triflumizole residues in/on crop commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this risk assessment.

C. Conditions

A limited field rotation study in wheat will be required as a condition of the cucurbit registration. As a condition of registration, the Agency will require the submission of acute and subchronic neurotoxicity studies in order to better characterize the neurological effects seen in the rat and mouse acute oral, the rat acute inhalation, and the rat chronic studies.

V. Conclusion

Therefore, the tolerance is established for combined residues of triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound in or on cucurbit vegetables, strawberries, sweet cherries, and tart cherries at 0.5 ppm, 2.0 ppm, 1.5 ppm, and 1.5 ppm, respectively. In establishing the tolerances for sweet cherries and tart cherries, the Agency has determined that, based upon the submitted residue field trials, the appropriate tolerance level is 1.5 ppm since residues are not expected to exceed this value. In addition, the Agency is correcting the commodity definitions from the proposed ''cherries'' to ''cherry, tart'' and ''cherry, sweet'' to reflect currently accepted terminology.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0063 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 12, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0063, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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 final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any 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 OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this 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 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 rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and 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: May 31, 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.

2. Section 180.476 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Cherry, sweet	1.5
Cherry, tart	1.5
* * * * *	
Strawberry	2.0
Vegetable, cucurbit, Group 9	0.5

* * * * *

[FR Doc. 02–14768 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7228–1]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Nevada applied for final authorization of revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Nevada's application and made a decision, subject to public review and comment, that Nevada's hazardous waste management program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, with respect to the revisions identified below, EPA is authorizing Nevada's hazardous waste management program revisions through this immediate final rule. EPA is publishing this rule to authorize the changes without a prior proposal because we believe that this action is not controversial and do not expect comments that oppose it. In the Proposed Rules section of this **Federal Register**, EPA is also publishing a proposal to authorize these changes to Nevada's hazardous waste management program. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Nevada's changes to its hazardous waste management program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal for purposes of this rulemaking action. EPA will respond to public comments in a later final rule based on the proposal. Nevada's application for program revision is available for public review and comment. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Final authorization for Nevada is effective August 12, 2002 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Nevada's program revision application must be received by the close of business July 12, 2002.

ADDRESSES: Copies of Nevada's program revision application are available during the business hours of 9 a.m. to 5 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710 Phone: 775/687–5872 Contact Allen Biaggi, Administrator.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/947–4406.

Written comments should be sent to Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–2), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/972–3316.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–2), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/972–3316.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must revise their programs and ask EPA to authorize the revisions. Revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Nevada initially received final authorization from EPA on August 19, 1985, effective October 18, 1985 (50 FR 33359), to implement the RCRA hazardous waste management program in Nevada. EPA has also authorized revisions to Nevada's authorized program to reflect changes in the Federal program. Currently Nevada's hazardous waste management program includes Federal changes through July 1, 1997. On March 13, 2000 and November 6, 2001, Nevada submitted final complete program revision applications for changes to the Federal program that occurred between July 1, 1997 and July 6, 1999, seeking authorization of its revisions in accordance with 40 CFR 271.21. This rulemaking action addresses those revisions.

B. What Decisions Have We Made in This Rule?

We conclude that Nevada's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nevada final authorization to operate its hazardous waste management program with the changes described in this rulemaking. Nevada has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by HSWA regulations take effect as a matter of federal law in authorized States before those states are authorized for such requirements and prohibitions. Thus, EPA implements those requirements and new prohibitions in Nevada, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

A facility in Nevada subject to RCRA will now have to comply with the authorized State requirements instead of the corresponding Federal requirements in order to comply with RCRA. Additionally, facilities must comply with any applicable Federally issued requirements, such as, for example, HSWA regulations issued by EPA for which Nevada has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Nevada continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This authorization action does not impose additional requirements on the regulated community because the regulations for which Nevada is being authorized are already effective under State law, and are not changed by today's authorization action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. You may not have another opportunity to comment. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize these State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will then use the proposal mentioned in the previous paragraph in making any further decision on the authorization of the State program changes. EPA will also address all public comments in a later final rule. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste management program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Nevada Previously Been Authorized for?

Nevada initially received final authorization for the base RCRA program on August 19, 1985 effective October 18, 1985 (50 FR 33359). Nevada has since received authorization for all revisions to the Federal RCRA program through June 1997. The following **Federal Register** publication and effective dates apply to those revisions: April 29, 1992 effective June 29, 1992 (57 FR 18083), May 27, 1994 effective July 26, 1994 (59 FR 27472), April 11, 1995 effective June 12, 1995 (60 FR 18358), June 24, 1996 effective August 23, 1996 (60 FR 32345) and January 29, 1999 effective March 30, 1999 (64 FR 4596).

G. What Changes Are We Authorizing With Today's Action?

On March 13, 2000 and November 6, 2001, Nevada submitted final complete program revision applications for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1997 and July 6, 1999, seeking authorization of those changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Nevada's hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. These revisions are analogous to the RCRA statutory provisions or Federal RCRA regulations in effect as of July 6, 1999. Upon authorization, the following Nevada hazardous waste management requirements that are either equivalent to or more stringent than the corresponding Federal requirements will apply instead of the Federal requirements:

Federal requirement	State analog
Land Disposal Restrictions Phase III-Emergency Extension of the K088 National Capacity Variance, Amendment (62 FR 37694, July 14, 1997) (HSWA) (Checklist 160).	Nevada Revised Statutes (NRS) 459.485 (1981, amended 1991) and 459.490 (1981, amended 1987, 1993); Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Sections 4 of LCB File No. R–124–98 (filed with the Secretary of State on November 2, 1998).
Emergency Revision of the Carbamate Land Disposal Restrictions (62 FR 45568, August 28, 1997) (HSWA) (Checklist 161).	Same as above.
Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers: Clarification and Technical Amendment (62 FR 64636, December 8, 1997) (HSWA) (Checklist 163).	Same as above.
Kraft Mill Steam Stripper Condensate Exclusion (63 FR 18504, April 15, 1998) (HSWA) (Checklist 164).	Same as above.
Recycled Used Oil Management Standards: Technical Correction and Clarification (63 FR 24963, May 6, 1998) (Non-HSWA) (Checklist 166).	Same as above.
Land Disposal Restrictions Phase IV Treatment Standards for Metal Wastes and Mineral Processing Wastes; Hazardous Soils Treatment Standards and Exclusions; Corrections; Mineral Processing Secondary Materials Exclusion; Bevill Exclusion Revisions and Clarification; Exclusion of Recycled Wood Preserving Wastewaters (63 FR 28556, May 26, 1998 and 63 FR 31266, June 8, 1998) (HSWA/Non-HSWA) (Checklists 167 A, B, C, E and F).	Same as above. However, this authorization does not include the mineral processing secondary materials exclusion portion of this rule (Checklist 167D)

Federal requirement	State analog
Hazardous Waste Combustors Revised Standards (63 FR 33782, June 19, 1998) (Non-HSWA) (Checklist 168).	Same as above.
Petroleum Refining Process Waste (63 FR 42110, August 6, 1998 and 63 FR 54356, October 9, 1998) (HSWA/Non-HSWA) (Checklist 169).	Nevada Revised Statutes (NRS) 459.485 (1981, amended 1991) and 459.490 (1981, amended 1987, 1993); Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Sections 8 and 9 of LCB File No. R–170–99 (filed with the Secretary of State on January 26, 2000).
Land Disposal Restrictions Phase IV—Zinc Micronutrients, Administrative Stay (63 FR 46332, August 31, 1998) (HSWA) (Checklist 170).	Same as above.
Emergency Revision of the LDR Treatment Standards for Listed Hazardous Waste from Carbamate Production (63 FR 47410, September 4, 1998) (HSWA) (Checklist 171).	Same as above.
Land Disposal Restrictions Phase IV-Extension of Compliance Date for Characteristic Slags (63 FR 48124, September 9, 1998) (HSWA) (Checklist 172).	Same as above.
Land Disposal Restrictions treatment Standards for Spent Potliners from Primary Aluminum Production (K088), Final Rule (63 FR 51254, September 24, 1998) (HSWA) (Checklist 173).	Same as above.
Post Closure Requirements and Closure Process (63 FR 56710, October 22, 1998) (HSWA/Non-HSWA) (Checklist 174).	Same as above.
Hazardous Waste Remediation Management Requirements—HWIR Media (63 FR 65874, November 30, 1998) (HSWA/Non-HSWA) (Checklist 175).	Same as above.
Universal Waste Rule—Technical Amendments (63 FR 71225, December 24, 1998) (Non-HSWA) (Checklist 176).	Same as above.
Organic Air Emission Standards: Clarification and Technical Amendments (64 FR 3382, January 21, 1999) (HSWA) (Checklist 177).	Same as above.
Petroleum Refining Process Wastes—Leachate Exemption (64 FR 6806, February 11, 1999) (HSWA) (Checklist 178).	Same as above.
LDR Phase IV—Technical Corrections and Clarifications to Treatment Standards (64 FR 25408, May 11, 1999) (HSWA/Non-HSWA) (Checklist 179).	
Test Procedures for the Analysis of Oil and Grease and Nonpolar Material (64 FR 26315, May 14, 1999) (Non-HSWA) (Checklist 180).	Same as above.
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps (64 FR 36466, July 6, 1999) (Non-HSWA) (Checklist 181).	Same as above.

Note: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987, 1993. NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; part 124, subparts A and B; parts 260 through 270, inclusive; part 273 and part 279 as modified by NAC 444.8633, NAC 444.8634, 444.86325 and the regulations included as Section 4 of LCB File No. R–124–98 and Sections 8 and 9 of LCB File No. R–170–99 (filed with the Secretary of State on November 2, 1998 and January 26, 2000).

H. Where Are the Revised State Rules Different From the Federal Rules?

Nevada has adopted by reference the Federal revisions identified above. There are no significant differences between the Federal rules and the revised State rules being authorized today.

I. Who Handles Permits After the Authorization Takes Effect?

NDEP will issue permits for all the provisions for which it is authorized and will administer the permits it issues. Section 3006(g)(1) of RCRA gives EPA the authority to issue or deny permits or parts of permits for requirements for which the state is not authorized. Therefore, whenever EPA adopts standards under HSWA for activities or wastes not currently covered by the authorized program, EPA may process RCRA permits in Nevada for the new or revised HSWA standards until NDEP has received final authorization for such new or revised HSWA standards. EPA and NDEP have agreed to a joint permitting process for facilities covered by both the authorized program and standards under HSWA for which the State is not yet authorized, and for handling existing EPA permits after the State receives authorization.

J. How Does Today's Action Affect Indian Country in Nevada?

Nevada is not being authorized to operate any portion of the hazardous waste management program in Indian country. Nevada is not authorized to carry out its hazardous waste management program in Indian country within the State, which includes the following: The Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe; Ely Shoshone Tribe; Fort McDermitt Paiute and Shoshone Tribes; Fort Mohave Indian Tribe; Las Vegas Tribe of Paiute Indians; Lovelock Paiute Tribe; Moapa Band of Paiute Indians; Paiute-Shoshone Tribe of the Fallon Reservation and Colony; Pyramid Lake Paiute Tribe; Reno-Sparks Indian Colony; Shoshone-Paiute Tribes of Duck Valley Reservation; Summit Lake Paiute Tribe; Te-Moak Tribes of Western Shoshone Indians; Walker River Paiute Tribe; Washoe Tribe; Winnemucca Indian Colony; Yerington Paiute Tribe; and the Yomba Shoshone Tribe. This authorization action has no effect in Indian country. EPA will continue to implement and administer the RCRA program in Indian country within the State.

K. What Is Codification and Is EPA Codifying Nevada's Hazardous Waste Management Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart DD for this authorization of Nevada's program changes.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this 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) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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. Law 104–4). For the same reason, this action also does not have implication within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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). This action will be effective August 12, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 3, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–14629 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051–2135–02; I.D. 022002C]

RIN 0648–AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP)that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion (BiOp) issued by NMFS under the Endangered Species Act (ESA). This rule is intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. The rule applies to the owners and operators of all vessels fishing for pelagic species under Federal western Pacific limited access longline permits (longline vessels) within the U.S. exclusive economic zone (EEZ) and the high seas around Hawaii, as well as those fishing for pelagic species with other types of hook-and-line gear (non-longline pelagic vessels) within the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands (western Pacific region). This rule prohibits the targeting of swordfish north of the equator by longline vessels, closes all fishing to longline vessels during April and May in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.), prohibits the landing or possessing of more than 10 swordfish per fishing trip by longline vessels

fishing north of the equator, allows the re-registration of vessels to Hawaii longline limited access permits only during the month of October, requires all longline vessel operators to annually attend a protected species workshop, and requires utilization of sea turtle handling and resuscitation measures on both longline vessels and non-longline pelagic vessels using hook-and-line gear.

DATES: Effective June 9, 2002, except for the amendments to § 660.22, paragraphs (hh) and (ii), which are effective June 14, 2002, and § 660.32, newly added paragraph (a)(2) and revised paragraph (a)(3), which are effective July 12, 2002.

ADDRESSES: Copies of the Final Environmental Impact Statement for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FEIS) and the Record of Decision (ROD) for this FEIS are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. The ROD is also available at *http://www.nmfs.noaa.gov/sfpa*. Copies of a regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: On April 29, 2002, NMFS published a proposed rule (67 FR 20945) intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. This action implements the reasonable and prudent alternative of the March 29, 2001, BiOp issued by NMFS on the FMP. The preamble of the proposed rule presented background information on the BiOp and implementation of its sea turtle take mitigation measures. This information is not repeated here. A comprehensive assessment of the environmental impacts of fishing activities conducted under the FMP is found in the March 30, 2001, FEIS (See **ADDRESSES**).

This final rule implements the following measures applicable to owners and operators of all vessels registered for use under either a Hawaii longline limited access permit or a longline general permit (longline vessels): (a) Prohibit longline vessels from using longline gear to target swordfish north of the equator; (b) require longline gear to be deployed such that the deepest point of the main longline between any 2 floats, (i.e., the deepest point in each sag of the main line), is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface when fishing north of the equator; (c) require that a minimum of 15 branch lines are used between any 2 floats on vessels using monofilament gear when fishing north of the equator; (d) require that a minimum of 10 branch lines are deployed between any 2 floats on vessels using basket-style longline gear when fishing north of the equator; (e) require that longline vessel operators possess and employ float lines of at least 20 m (65.6 ft) to suspend the mainline beneath any float on fishing trips north of the equator; (f) prohibit the possession of a lightstick or any artificial light that may be used as a fish lure, e.g., glow bead, on board a longline vessel on fishing trips north of the equator; (g) prohibit the landing or possessing of more than 10 swordfish per trip by longline vessels fishing north of the equator; (h) prohibit fishing by longline vessels from April 1 through May 31 in the area bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (i) allow the processing of applications for the re-registration of a vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing; and (j) require operators of longline vessels to annually attend a protected species workshop conducted by NMFS.

This final rule uses slightly different wording from the current emergency rule in place for the requirement that float lines used to suspend the mainline beneath floats be longer than 20 m (65.6 ft) when longlining north of the equator (see § 660.33(b)). The revision clarifies that vessel operators may not maintain on board the vessel multiple shorter float lines and claim the lines will be fastened together to form a line exceeding 20 m when or if deployed. The revised wording clarifies that the restriction applies not just to float lines when actually deployed, but also to float lines that are on board a permitted vessel. Also, the prohibition on the use of lightsticks is clarified to mean any type of light emitting device, including any flourescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

This final rule also: (k) Requires gear retrieval to cease if a sea turtle is discovered hooked or entangled on a longline during gear retrieval, until the turtle has been removed from the gear or brought onto the vessel's deck; (l) requires operators of all ''large'' longline vessels (those with a freeboard of 3 ft (0.9 m) or more) to, if practicable, use a dip net meeting NMFS' specifications as prescribed in 50 CFR 660.32 to hoist a sea turtle onto the deck to facilitate the removal of the hook or to revive a comatose sea turtle (operators of all ''small'' longline vessels, i.e., those with a freeboard of less than 3 ft or 0.9 m, are required to, if practicable, ease a sea turtle onto the deck by grasping its carapace (shell) or flippers).

In addition, the operators of all longline vessels within the EEZ and the high seas around Hawaii, and non-longline pelagic fishing vessels fishing with hook-and-line within EEZ waters of the western Pacific region, are required to: (m) Carry and use line-clippers to cut fishing line from hooked or entangled sea turtles (operators of ''large'' vessels, i.e., those with a freeboard of more than 3 ft or 0.9 m, are required to use line clippers meeting NMFS' performance standard and operators of ''small'' vessels, i.e., those with a freeboard of 3 ft or 0.9 m or less, must carry and use either a line cutter that meets NMFS' performance standard, or one that is more appropriate to the size and configuration of the fishing vessel, but in either case this line clipper must be capable of cutting the vessel's fishing line or leader within approximately 1 ft of the eye of an embedded hook); (n) carry and use wire or bolt cutters capable of cutting through fishing hooks to facilitate cutting of hooks embedded in sea turtles; (o) remove all hooks from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, cut the line as close to the hook as possible; (p) handle all incidentally taken sea turtles brought aboard for dehooking and/or disentanglement in a manner to minimize injury and promote post-hooking survival (if a sea turtle is too large or hooked in such a manner to preclude safe boarding without causing further damage/injury to the turtle, use line-clippers to clip the line and remove as much line as possible prior to releasing the turtle); and (q) where practicable, bring comatose sea turtles on board the vessel and perform resuscitation as prescribed in 50 CFR § § 223.206 (d)(1), 660.22, and 660.32.

Comments and Responses

Two letters were received commenting on the proposed rule.

Comment 1: The proposed rule should not be implemented because it is

based on an unlawfully prepared, substantively flawed, and outdated BiOp and relies upon the flawed analysis contained in the FEIS.

Response: NMFS believes that the March 29, 2001, BiOp represents the best available science concerning the status of endangered and threatened sea turtles. Accordingly, NMFS believes that the mitigation measures contained in the BiOp and implemented through this final rule will protect and conserve listed sea turtles taken in the U.S. pelagic fisheries of the western Pacific region. Taking no action at this time would allow a lapse in protection of sea turtles and would not ensure that these fisheries avoid the likelihood of jeopardizing the turtles, as required under the ESA.

Comment 2: The proposed rule would not avoid the likelihood that the Hawaii-based longline fleet would jeopardize the continued existence of listed sea turtles. NMFS observer data show that from January 1 through December 31, 2001, 23 sea turtle interactions occurred in the Hawaii-based longline fishery. Therefore, additional restrictions on the fishery are warranted, such as total closure of the fishery from April 1 through May 31 and closure of the area south of the Hawaiian Islands (16 N. lat. to the equator and from 145° W. long. to 180° long.) from mid-January through mid-June of each year.

Response: NMFS believes that this final rule will adequately conserve sea turtles. Although NMFS observer data documented 23 interactions with sea turtles between January 1 and December 31, 2001, observer data since April 2001 showed that interim turtle mitigation measures imposed in April 2001 had reduced the observed takes to only 3 turtles (2 olive ridleys, 1 green, no leatherback or loggerhead turtles) through December 2001. The observer coverage on Hawaii-based pelagic longline limited access vessels from April through December 2001, ranged from 15 to 22 percent. In February and March of 2002, observers reported longline gear interactions with 3 loggerhead turtles north of 26° N. lat. As a result, NMFS instituted additional emergency restrictions on April 5, 2002, that banned longline fishing north of 26° N. lat. and limiting the possession or landing to no more than 10 swordfish per fishing trip. The swordfish trip limit is included in this final rule. In the area south of 26° N. lat.—an area where fishermen primarily fish for tuna since April 2001, NMFS observers have reported two interactions with leatherback turtles, but no interaction with loggerheads. NMFS believes that the suite of mitigation measures implemented by this final rule will effectively reduce or eliminate the take of loggerhead and leatherback sea turtles and reduce the take of other species of sea turtles in the fishery, as similar measures implemented through earlier emergency rulemaking have done.

Changes From the Proposed Rule

In § 660.22, the paragraphs proposed for revision in the proposed rule are redesignated in the order they were published in the proposed rule to account for a recent final rule published at 67 FR 34408, May 14, 2002. The May 14 final rule revised paragraphs (z) through (dd) and added paragraphs (ee) through (ii), effective June 13, 2002. Paragraphs (hh) and (ii) of the May 14 final rule are removed and reserved by this final rule, because those provisions are superceded by this final rule. In § 660.22, paragraphs (kk) and (ll) of the proposed rule are not included in this final rule, because the prohibition in paragraph (kk) is already covered by other prohibitions and because paragraph (ll) already appears as paragraph (uu) of this section. In § 660.32, the references to vessels with working platforms 3 feet (0.9 m) from the sea surface have been changed to refer instead to vessels with a freeboard of 3 feet (0.9 m). ''Freeboard'' is a more objective measure of the height of a vessel's deck above the surface than measuring the distance from a working platform to the sea; therefore, this change should improve the ability of NMFS to enforce the regulations.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. The EIS was filed with the Environmental Protection Agency; a Notice of Availability was published on April 6, 2001 (66 FR 18243). NMFS has issued a ROD for this FEIS. A copy of the ROD is available from the PIAO (see **ADDRESSES**).

NMFS prepared an FRFA describing the impact of the action on small entities. The following is a summary of the FRFA.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. None of the comments received on the proposed rule directly or indirectly addressed the Initial Regulatory Flexibility Analysis. This final rule will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

Both large and small vessels affected by the final rule are considered to be ''small entities'' under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of $3.5 million. Only the Hawaii-based longline fleet is expected to experience significant direct effects from this final rule. This fishery averaged annual ex-vessel gross revenues of $40.7 million between 1994 and 1998 (the focus of the BiOp and the last full years' worth of economic data prior to the implementation of a sequence of measures to protect sea turtles).

Assuming that fishing effort that is displaced as a result of the swordfish targeting prohibition or seasonal area closure is transferred into allowable effort in open areas, the anticipated annual loss of ex-vessel gross revenues from this fishery is estimated to be 11 percent ($4.3 million). Assuming that all displaced effort is removed from the western Pacific longline fishery, the anticipated annual loss of ex-vessel gross revenue for this fishery is estimated to be 42 percent ($17.2 million).

Impacts on the American Samoa-based pelagic longline fisheries (the only active U.S. non-Hawaii longline fishery in the western Pacific region) are anticipated to be minimal, as these vessels generally fish below the equator and thus will not be affected by either the targeting restrictions or the seasonal area closure. The only direct cost for this fleet is that of acquiring bolt cutters and line clippers, for the smaller vessels, and bolt cutters, line clippers, and dip nets for the larger vessels. Assuming that these items are purchased in [in or from the state itself] Hawaii and are useable for several years, the average cost per vessel is anticipated to be approximately $20 per vessel for bolt cutters, $30 per vessel for line clippers, and $75 per vessel for dip nets. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it is not a time-consuming procedure to free it.

Impacts on non-longline pelagic vessels throughout the region are also anticipated to be minimal, as the final rule will not affect the operations of these vessels beyond the requirement that vessel operators purchase and use

bolt cutters and line clippers to free hooked or entangled sea turtles. Because the use of long handled line clippers is optional on these small vessels, it is believed that the majority of these vessel operators will employ their bolt cutters to cut their fishing line if necessary. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it should not be a time-consuming procedure to free it.

This final rule (the preferred alternative) implements the provisions of the reasonable and prudent alternative of the March 29, 2001, BiOp regarding the protection of endangered and threatened sea turtles for all pelagic fisheries in the western Pacific region. This final rule contains the provisions of the emergency rule for the Hawaii-based pelagic longline fishery effective through June 8, 2002. A range of other alternatives was also considered in the FRFA. The first alternative was the no action alternative, which would have allowed the current emergency rule to expire, removing restrictions on the fishery that protect sea turtles. This alternative was rejected because it would not provide any additional protection to sea turtles. A second alternative would have prohibited shallow setting by longline vessels in the western Pacific region, required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient protection to ensure that the fishery avoids jeopardizing the continued existence of sea turtles. A third alternative would have closed waters north of 29° N. lat. to longline fishing from July through January of each year, and required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was also rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient protection to ensure that the fishery avoids jeopardizing the continued existence of sea turtles. A fourth alternative would have closed all western Pacific EEZ waters to longline fishing and prohibited the landing of longline caught fish in all U.S. western Pacific ports. This alternative was also rejected because, although it would have provided increased protection to sea turtles as compared to the preferred alternative, it would also have eliminated western Pacific longline fisheries. NMFS believes that the preferred alternative allows the continued harvest of pelagic fish in the western Pacific region while also protecting endangered and threatened sea turtles. Furthermore, it is the only alternative that meets the requirements of the ESA, through implementation of the reasonable and prudent alternative of the March 29, 2001, BiOp. A copy of the FRFA is available from the Council (see **ADDRESSES**).

A formal section 7 consultation under the ESA was concluded for the FMP, resulting in the March 29, 2001, BiOp. In the BiOp, NMFS determined that fishing activities conducted under the FMP and its implementing regulations were likely to jeopardize the continued existence of the green sea turtle, leatherback turtle, and loggerhead turtle and prescribed a non-discretionary reasonable and prudent alternative for this FMP to avoid the likelihood of jeopardizing the continued existence of these sea turtles. This final rule implements this non-discretionary reasonable and prudent alternative, as well as non-discretionary terms and conditions also in the BiOp.

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NMFS, finds good cause to waive the 30–day delay in effectiveness for turtle mitigation measures for the Hawaii-based longline fishery. A waiver of the delay in effectiveness for the final rule is needed to ensure the uninterrupted protection of sea turtles in the fishery following the expiration of an emergency interim rule on June 8, 2002. All turtle mitigation measures in this final rule applicable to non-Hawaii longline fisheries will take effect 30–days following publication of this final rule except for the mitigation measure requiring that operators with Western Pacific general longline permits to attend a protected species workshop, which will take effect on August 31, 2002.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: June 6, 2002.

William, T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.21, paragraph (l) is added to read as follows:

§ 660.21 Permits.

* * * * *

(l) Applications for the re-registration of any vessel that was de-registered from a Hawaii longline limited access permit after March 29, 2001, must be received at PIAO or postmarked between September 15 and October 15.

3. In § 660.22, paragraphs (hh) and (ii) are removed and reserved and paragraphs (jj) through (tt) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(jj) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit that has a freeboard of more than 3 ft (0.9 m) in violation of § 660.32(a).

(kk) Fail to carry line clippers and wire or bolt cutters on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands that has a freeboard more than 3 ft (0.9 m) in violation of § 660.32(a)(2).

(ll) Fail to carry line clippers and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit or on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that has a freeboard of less than 3 ft (0.9 m) in violation of § 660.32(a)(3).

(mm) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a

vessel registered for use under a Hawaii longline limited access permit or a longline general permit, or fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands in violation of § 660.32(b).

(nn) Direct fishing effort toward the harvest of swordfish (Xiphias gladius) using longline gear deployed north of the equator on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit in violation of § 660.33(a).

(oo) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit or a longline general permit within closed areas or by use of unapproved gear configurations in violation of § 660.33(b), (c), (g), or (h).

(pp) Use a receiving vessel registered for use under a receiving vessel permit to receive, land, or tranship from another vessel, Pacific pelagic management unit species harvested from closed areas with longline gear in violation of § 660.33(d).

(qq) Land or tranship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested from closed areas with longline gear in violation of § 660.33(e).

(rr) Possess a light stick on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, on fishing trips that include any fishing north of the equator (0° lat.) in violation of § 660.33(f).

(ss) Possess or land more than 10 swordfish on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, from a fishing trip where any part of the trip included fishing north of the equator (0° lat.) in violation of § 660.33(h).

(tt) Operate a vessel registered for use under a Hawaii longline limited access permit or a longline general permit to fish for Pacific pelagic management unit species without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36(c).

* * * * *

4. In § 660.32, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(4) and (a)(5) respectively, new paragraphs (a)(1) and (a)(2) are added, and paragraph (a)(3) is revised to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear*—(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or (after July 12, 2002) a longline general permit that have a freeboard more than 3 ft (0.9 m) must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, dip nets meeting minimum standards prescribed in paragraph (a)(5) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(2) Owners and operators of vessels using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have a freeboard more than 3 ft (0.9 m) must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(3) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit, or using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have a freeboard of 3 ft (0.9 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook as well as wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

5. Section 660.33 is added to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

(a) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear to fish for or target swordfish (*Xiphias gladius*) north of the equator (0° lat.).

(b) A person aboard a vessel registered for use under a Hawaii longline limited access permit or a western Pacific general longline permit that is fishing for Pacific pelagic management unit species north of the equator (0° lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph ''float line'' means a line used to suspend the main longline beneath a float.

(c) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180 long. (see Figure 1 to this section).

(d) From April 1 through May 31, owners and operators of vessels registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(e) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit, a longline general permit, or a receiving vessel permit, may not land or transship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0 latitude, on the north by 15° N. lat., on the east by

145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(f) No light stick may be possessed on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, during fishing trips that include any fishing north of the equator (0° lat.). A light stick as used in this paragraph is any type of light emitting device, including any flourescent ''glow bead,'' chemical, or electrically powered light that is affixed underwater to the longline gear.

(g) When a conventional monofilament longline is deployed in the water north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit, no fewer than 15 branch lines may be set between any 2 floats when fishing north of the equator. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing north of the equator.

(h) Longline gear deployed north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit must be deployed such that the deepest point of the main longline between any 2 floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(i) Owners and operators of longline vessels registered for use under a Hawaii longline limited access permit or a longline general permit may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing north of the equator (0° lat.).

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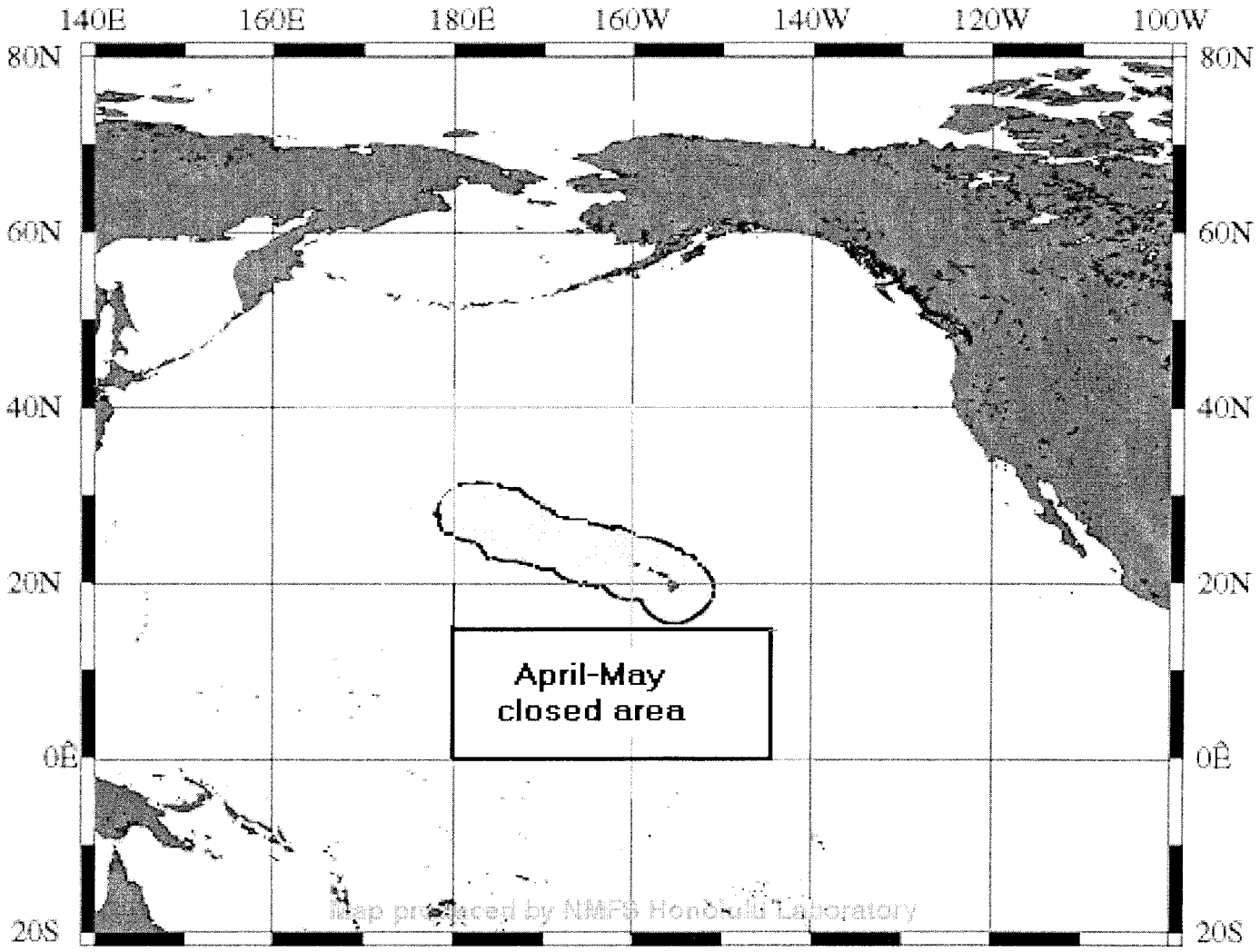

Figure 1 to § 660.33 - Longline Fishing Restricted Area

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6. Section 660.36 is redesignated as § 660.34 and revised to read as follows:

§ 660.34 Protected species workshop.

(a) Each year the operator of a vessel registered for use under a Hawaii longline limited access permit or (after August 31, 2002) a longline general permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS

annually to any person who has completed the workshop.

(c) An operator of a vessel registered for use under Hawaii longline limited access permit or a longline general permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

[FR Doc. 02–14749 Filed 6–7–02; 3:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 113
Wednesday, June 12, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–45, –50, –80A, –80C2, and –80E1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede three existing airworthiness directives (AD's), that are applicable to GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines. Those AD's currently require specific handling of the GE CF6 series high pressure compressor rotor (HPCR) stage 3–9 spools during a fluorescent penetrant inspection process, and an initial and repetitive ultrasonic and eddy current inspections of certain HPCR stage 3–9 spools for cracks. This proposal would remove the AD that requires special handling of the spools during fluorescent-penetrant inspection, and would adjust and combine the initial and repetitive inspection requirements, currently listed in two AD's, into one AD for the HPCR stage 3–9 spool. This proposal aligns repetitive inspection requirements with the more stringent initial inspection requirements required by AD 2000–16–12, Amendment 39–11868 (65 FR 50623, August 21, 2000) and terminates AD 95–18–14, Amendment 39–9361 (60 FR 46216, September 6, 1995) that is no longer necessary. The actions specified in the proposed AD are intended to prevent cracks which can cause separation of the HPCR stage 3–9 spool and possible uncontained engine failure.

DATES: Comments must be received by August 12, 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–26–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 General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. 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: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–07147; 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–26–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–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 29, 1995, the FAA issued AD 95–18–14, Amendment 39–9361 (60 FR 46216, September 6, 1995), to require specific handling of the HPCR 3–9 spool during fluorescent penetrant inspection whenever that inspection is performed on these spools. That action was prompted by a report of an uncontained failure of a General Electric Company (GE) CF6–50 HPCR stage 3–9 spool. This requirement, adopted at that time by that AD, has since been incorporated in General Electric fluorescent penetrant inspection (FPI) Standard Practice 70–32–02.

On October 18, 1999, the FAA issued AD 99–24–15, Amendment 39–11440 (64 FR 66554, November 29, 1999), to require more stringent ultrasonic and eddy current inspection intervals for certain HPCR stage 3–9 spools, added CF6–80E1 engines to the inspection program, added inspection requirements for spools manufactured from 8 inch diameter billet, added inspection requirements for stage 3–5 blade slot bottoms, and added inspection requirements for web and hub-to-web transition areas. Airworthiness Directive 99–24–15 superseded AD 95–23–03, Amendment 39–9423 (60 FR 57803, November 21, 1995). Subsequent to that action, there was an additional HPCR stage 3–9 spool separation in service and a reassessment was made of the adequacy of the existing program in place at that time, to prevent a HPCR stage 3–9 spool cracking and separation. Based on that assessment, the FAA determined there was a need to make changes to AD 99–24–15.

On August 10, 2000, the FAA issued AD 2000–16–12, Amendment 39–11868 (65 FR 50623, August 21, 2000), to require initial ultrasonic and eddy current inspections of certain HPCR stage 3–9 spools for cracks at a further accelerated rate relative to the requirements of AD 99–24–15. AD 2000–16–12 required initial inspection, on a priority basis, of HPCR stage 3–9 spools that had higher probability of failure based on service life. AD 2000–16–12 did not require repetitive inspection requirements. Certain inspection requirements of AD 99–24–15, which are still applicable today, are no longer consistent with that recent corrective action. Therefore, a comprehensive initial and repetitive inspection program is being proposed for the affected 3–9 spools still in service. This proposed rule combines the requirements of AD 99–24–15 and AD 2000–16–12 with the following additional changes:

- Extends the accelerated initial inspection requirements of AD 2000–16–12 beyond July 28, 2001,
- Relaxes initial compliance requirement for the CF6–50 and CF6–80A 13-inch billet spools to make them consistent with 9 and 10-inch billet spools,
- Adds repetitive inspection requirements to the existing one-time inspection requirement for the CF6–80C and –80E series engine spool web and hub-to-web transition areas,
- Replaces engine shop visit inspection threshold limits for certain spools with cyclic limits,
- Adds a time limit for slot bottom inspection for 13-inch billet spools for CF6–50, –80A engines and for 9-inch and 10-inch billet spools for CF6–50, –80A, and -80C engines,
- Adds time limitation for the initial inspection and adds repeat inspection intervals for stage 3–5 slot bottom inspection for certain spools,
- Adds a time limit for one-time inspection of 8-inch billet 2-piece spools, and
- Provides for an alternative modular inspection for the slot bottoms,

The action was prompted by a report of an uncontained failure of an HPCR 3–9 spool. These conditions, if not corrected, could result in separation of the HPCR stage 3–9 spool and a possible uncontained engine failure.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following GE Alert Service Bulletins (ASB's):

ASB GE CF6–50 72–A1108, Revision 4, dated June 6, 2001
ASB GE CF6–50 72–A1131, Revision 3, dated June 6, 2001
ASB GE CF6–50 72–A1157, Revision 3, dated January 31, 2002
ASB GE CF6–80A 72–A0678, Revision 4, dated June 6, 2001
ASB GE CF6–80A 72–A0691, Revision 4, dated June 6, 2001
ASB GE CF6–80A 72–A0719, Revision 4, dated January 31, 2002
ASB GE CF6–80C2 72–A0812, Revision 3, dated June 6, 2001
ASB GE CF6–80C2 72–A0848, Revision 7, dated June 6, 2001
ASB GE CF6–80C2 72–A0934, Revision 3, dated January 31, 2002
ASB GE CF6–80E1 72–A0135, Revision 2, dated June 6, 2001
ASB GE CF6–80E1 72–A0126, Revision 4 , dated June 6, 2001
ASB GE CF6–80E1 72–A0137, Revision 3, dated January 31, 2002

Those ASB's describe procedures for eddy current and ultrasonic inspections of HPCR stage 3–9 spools for cracks.

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 GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines of this same type design, the proposed AD would supersede AD 95–18–14, AD 99–24–15, and AD 2000–16–12 to require initial and repetitive ultrasonic and eddy current inspections. The actions would be required to be done in accordance with the service bulletin described previously.

Interim Actions

These proposed actions are considered interim actions, and may be changed in future rulemaking actions.

Cost Analysis

There are approximately 3,147 engines of the affected design in the worldwide fleet. The FAA estimates that 1,289 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 238 work hours per engine to perform the proposed actions. The average labor rate is $60 per work hour. Required parts would cost approximately $35,000 per engine. In addition, because of the previous AD actions, the FAA estimates that only 72 percent (928 engines) of the engines installed on airplanes of U.S. registry would be affected. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $45,731,840.

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 removing Amendments 39–9361 (60 FR 46216, September 6, 1995), 39–11440 (64 FR 66554, November 29, 1999), and 39–11868 (65 FR 50623, August 21, 2000), and by adding a new airworthiness directive:

General Electric Company (GE): Docket No. 2001–NE–26–AD. Supersedes AD 95–18–14, Amendment 39–9361; AD 99–24–15, Amendment 39–11440; and AD 2000–16–12, Amendment 39–11868.

Applicability

This airworthiness directive (AD) is applicable to GE CF6–45, –50, –80A, –80C2, and –80E1 turbofan engines with high pressure compressor rotor (HPCR) stage 3–9 spools with part numbers (P/N's) listed in the following Table 1 installed:

TABLE 1

Engine model	HPCR stage 3–9 spool P/N
CF6–45/50 Series Engines	9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, 9331M29G01.
CF6–80A Series Engines	9136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G28.
CF6–80C2 Series Engines	1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, 1854M95P07, 1854M95P08, 9380M28P05.
CF6–80E1 Series Engines	1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02, 1782M22G04.

These engines are installed on, but not limited to, Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series 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 (p) 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 as indicated, unless already done.

To detect cracks, which can cause separation of the HPCR stage 3–9 spool and possible uncontained engine failure, do the following:

CF6–50 16-inch billet spools

(a) For CF6 HPCR stage 3–9 spool, part numbers (P/N's) 9136M89G02, 9136M89G06, 9253M85G02, 9273M14G01, 9331M29G01, and for P/N 9136M89G08 with serial numbers (SN's) listed in the following Table 2, do the following:

TABLE 2

MPOE3486	MPOE3487	MPOE3488	MPOE3489	MPOE3490	MPOE3491	MPOE3492
MPOG3832	MPOG3833	MPOG3834	MPOG3835	MPOG3836	MPOG3837	MPOG3838
MPOG3839	MPOG3840	MPOG3841	MPOG3842	MPOG3843	MPOG3844	MPOG3845
MPOG3846	MPOG3847	MPOG3848	MPOG3850	MPOG3851	MPOG5228	MPOG5230
MPOG5231	MPOG5232	MPOG6727	MPOG6728	MPOG6729	MPOG6730	MPOG6731
MPOG6732	MPOG6733	MPOG6735	MPOG6736	MPOG6738	MPOG6739	MPOG6740
MPOG6741	MPOG6742	MPOG6743	MPOG6744	MPOG6745	MPOG6746	MPOG7713
MPOG7714	MPOG7715	MPOG7716	MPOG7717	MPOG7718	MPOG7719	MPOG7720
MPOG7721	MPOG7722	MPOG7723	MPOG7724	MPOG7725	MPOG7726	MPOG7727
MPOG7728	MPOG7729	MPOG7730	MPOG7731	MPOG7732	MPOG7733	MPOG7734
MPOG7735	MPOG7736	MPOG7737	MPOG7738	MPOG7739	MPOG7740	MPOG7741
MPOG7742	MPOG7743	MPOG7744	MPOG7819	MPOG7820	MPOG7821	MPOG7822
MPOG7823	MPOG7824	MPOG7825	MPOG7826	MPOG7827	MPOG7828	MPOG7829
MPOG7830	MPOG7831	MPOG7832	MPOG7833	MPOG7834	MPOG7835	MPOG7836
MPOG7837	MPOG7838	MPOG7839	MPOG8822	MPOG8823	MPOG8824	MPOG8825
MPOG8826	MPOG8827	MPOG8828	MPOG8829	MPOG8830	MPOG8831	MPOG8832
MPOG8833	MPOG8834	MPOG8835	MPOG8836	MPOG8837	MPOG9185	MPOG9186
MPOH0289	MPOH0290	MPOH0291	MPOH0292	MPOH0293	MPOH0294	MPOH0295
MPOH0296	MPOH0297	MPOH0298	MPOH0299	MPOH0300	MPOH0301	MPOH0302
MPOH0303	MPOH0304	MPOH0305	MPOH1805	MPOH2040	MPOH2041	MPOH2042
MPOH2043	MPOH2044	MPOH2045	MPOH2046	MPOH2047	MPOH2048	MPOH2049
MPOH2050	MPOH2051	MPOH2052	MPOH2053	MPOH2054	MPOH2055	MPOH2056
MPOH2057	MPOH2058	MPOH2059	MPOH2060	MPOH2061	MPOH2062	MPOH2829
MPOH2830	MPOH2831	MPOH2832	MPOH2833	MPOH2834	MPOH2835	MPOH2836
MPOH2837	MPOH2838	MPOH2839	MPOH2840	MPOH2841	MPOH2842	MPOH2843
MPOH2844	MPOH2845	MPOH2846	MPOH2847	MPOH2848	MPOH2849	MPOH2850
MPOH2851	MPOH2852	MPOH2853	MPOH2854	MPOH2855	MPOH2856	MPOH2857
MPOH2858	MPOH4307	MPOH4308	MPOH4309	MPOH4310	MPOH4311	MPOH4312
MPOH4313	MPOH5277	MPOH5278	MPOH5279	MPOH5280	MPOH5281	MPOH5282
MPOH5283	MPOH5520	MPOH5530	MPOH5531	MPOH5532	MPOH5533	MPOH5534
MPOH5535	MPOH5536	MPOH5537	MPOH5538	MPOH5539	MPOH5540	MPOH5541
MPOH5542	MPOH5543	MPOH5544	MPOH5545	MPOH5546	MPOH5547	MPOH5548
MPOH5549	MPOH5550	MPOH5551	MPOH5552	MPOH5553	MPOH5554	MPOH7020
MPOH7021	MPOH7022	MPOH7023	MPOH7024	MPOH7025	MPOH7026	MPOH7027
MPOH7028	MPOH7030	MPOH7960	MPOH7965	MPOH7966	MPOH7967	MPOH7968
MPOH7969	MPOH7970	MPOH7971	MPOH7972	MPOH7973	MPOH7974	MPOH7975
MPOH8638	MPOH8639	MPOH8640	MPOH8641	MPOH8642	MPOH8643	MPOH8644
MPOH8645	MPOH8646	MPOH8647	MPOH8648	MPOH8649	MPOH8650	MPOH8651
MPOH8652	MPOH8653	MPOH8654	MPOH8655	MPOH8656	MPOH8657	MPOH8658
MPOH8659	MPOH8677	MPOH8678	MPOH8679	MPOH8680	MPOH8682	MPOH8683
MPOH8684	MPOJ1796	MPOJ1797	MPOJ1798	MPOJ1799	MPOJ1800	MPOJ1801

TABLE 2—Continued

MPOJ1803	MPOJ1804	MPOJ1806	MPOJ1930	MPOJ1931	MPOJ1932	MPOJ1933
MPOJ1934	MPOJ1935	MPOJ1936	MPOJ1938	MPOJ1939	MPOJ1940	MPOJ1941
MPOJ1942	MPOJ1943	MPOJ1944	MPOJ1945	MPOJ1946	MPOJ1947	MPOJ1948
MPOJ1949	MPOJ1950	MPOJ1951	MPOJ1953	MPOJ1954	MPOJ1955	MPOJ1956
MPOJ1957	MPOJ1958	MPOJ2420	MPOJ2421	MPOJ2422	MPOJ2423	MPOJ2424
MPOJ2425	MPOJ2426	MPOJ2427	MPOJ2428	MPOJ2429	MPOJ2430	MPOJ2431
MPOJ2432	MPOJ2433	MPOJ2434	MPOJ2435	MPOJ2436	MPOJ2437	MPOJ2438
MPOJ2439	MPOJ2440	MPOJ2441	MPOJ2442	MPOJ2443	MPOJ2444	MPOJ2445
MPOJ2446	MPOJ2447	MPOJ2448	MPOJ2449	MPOJ2450	MPOJ4173	MPOJ4174
MPOJ5185	MPOJ5186	MPOJ6035	MPOJ6036	MPOJ6039	MPOJ6040	MPOJ6041
MPOJ6042	MPOJ6043	MPOJ6044	MPOJ6045	MPOJ6046	MPOJ6047	MPOJ6048
MPOJ6049	MPOJ6050	MPOJ6051	MPOJ6052	MPOJ6053	MPOJ6054	MPOJ6055
MPOJ6056	MPOJ6057	MPOJ6058	MPOJ6059	MPOJ6060	MPOJ6061	MPOJ6062
MPOJ6063	MPOJ6064	MPOJ6065	MPOJ6066	MPOJ6067	MPOJ6068	MPOJ6500
MPOJ6501	MPOJ6502	MPOJ6503	MPOJ6505	MPOJ6506	MPOJ6507	MPOJ6508
MPOJ6509	MPOJ6510	MPOJ6511	MPOJ6512	MPOJ6513	MPOJ6514	MPOJ6515
MPOJ6516	MPOJ6517	MPOJ7632	MPOJ7633	MPOJ7634	MPOJ7635	MPOJ7636
MPOJ7637	MPOJ7638	MPOJ7639	MPOJ7640	MPOJ7641	MPOJ7642	MPOJ7643
MPOJ8046	MPOJ8047	MPOJ8048	MPOJ8049	MPOJ8050	MPOJ8051	MPOJ9308
MPOJ9309	MPOJ9310	MPOJ9311	MPOJ9312	MPOJ9313	MPOJ9314	MPOJ9315
MPOK1233	MPOK1234	MPOK1235	MPOK1236	MPOK1237	MPOK1238	MPOK1239
MPOK1240	MPOK1824	MPOK1825	MPOK1826	MPOK1827	MPOK1828	MPOK1829
MPOK1830	MPOK1831	MPOK1832	MPOK2694	MPOK2695	MPOK3067	MPOK3068
MPOK3069	MPOK3070	MPOK3071	MPOK4659	MPOK4660	MPOK4661	MPOK4662
MPOK4663	MPOK4664	MPOK4665	MPOK4666	MPOK4667	MPOK5082	MPOK5083
MPOK5084	MPOK5085	MPOK5086	MPOK5087	MPOK5088	MPOK5520	MPOK5521
MPOK5522	MPOK5955	MPOK5956	MPOK5957	MPOK5958	MPOK5959	MPOK5960
MPOK5961	MPOK5962	MPOK5963	MPOK5964	MPOK6247	MPOK6248	MPOK6249
MPOK6250	MPOK6251	MPOK6252	MPOK6253	MPOK6254	MPOK6255	MPOK6256
MPOK6257	MPOK6715	MPOK6716	MPOK6823	MPOK6824	MPOK6825	MPOK6826
MPOK6827	MPOK6828	MPOK6829	MPOK6830	MPOK6831	MPOK7226	MPOK7227
MPOK7228	MPOK7229	MPOK7230	MPOK7231	MPOK7232	MPOK7233	MPOK7234
MPOM2128	MPOM2129	MPOM2130	MPOM2131	MPOM2132	MPOM2133	MPOM2134
MPOM2135	MPOM2136	MPOM2137	MPOM2138	MPOM2357	MPOM2358	MPOM2359
MPOM2360	MPOM2361	MPOM2362	MPOM2363	MPOM2364	MPOM2365	MPOM2366
MPOM2461	MPOM2462	MPOM5521	MPOM5522	MPOM5523	MPOM5524	MPOM5525
MPOM5526	MPOM5527	MPOM5528	MPOM5529	MPOM5530	MPOM5531	MPOM5532
MPOM5533	MPOM5534	MPOM5535	MPOM5536	MPOM5537	MPOM6151	MPOM6152
MPOM6153	MPOM6154	MPOM6155	MPOM6156	MPOM6157	MPOM6158	MPOM6159
MPOM6160	MPOM6161	MPOM6162	MPOM7087	MPOM7088	MPOM7089	MPOM7091
MPOM7092	MPOM7093	MPOM7094	MPOM7095	MPOM7096	MPOM7097	MPOM7098
MPOM7099	MPOM7100	MPOM7101	MPOM7102	MPOM7103	MPOM7104	MPOM7105
MPOM7106	MPOM7107	MPOM7108	MPOM7109	MPOM8297	MPOM8298	MPOM8299
MPOM8300	MPOM8301	MPOM8302	MPOM9246	MPOM9257	MPOM9258	MPOM9259
MPOM9260	MPOM9261	MPOM9262	MPOM9265	MPOM9721	MPOM9722	MPOM9723
MPON0051	MPON0052	MPON0053	MPON0055	MPON0056	MPON0057	MPON0058
MPON0059	MPON0060	MPON0061	MPON0062	MPON0063	MPON0064	MPON0065
MPON0066	MPON0067	MPON0068	MPON0069	MPON0073	MPON0074	MPON0075
MPON0076	MPON1077	MPON1078	MPON1079	MPON1080	MPON1081	MPON1082
MPON1084	MPON1085	MPON1086	MPON1087	MPON1088	MPON1089	MPON1090
MPON1091	MPON1092	MPON1093	MPON1094	MPON1095	MPON1096	MPON1097
MPON1098	MPON1099	MPON1100	MPON1642	MPON4250	MPON4252	MPON4254
MPON4255	MPON4256					

Initial Inspection

(1) If the spool has not already been inspected using one of the alert service bulletins (ASB's) or service bulletins (SB's) listed in Column A of the following Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with alert service bulletin (ASB) CF6–50 72–A1108, Revision 4, dated June 6, 2001, and the following compliance times:

TABLE 3

CF6–50 SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–888, Revision 3, dated January 31, 1991.	70–32–09, Revision 71, dated October 1, 1995.	70–32–10, Revision 71, dated October 1, 1995.	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996.	70-–32–14, TR, 70–26, dated August 26, 1996.
SB 72–888, Revision 4, dated March 28, 1991.	70–32–09, Revision 72, dated November 15, 1996.	70–32–10, Revision 72, dated November 15, 1996.	70–32–13, Revision 72, dated November 15, 1996.	70–32–14, Revision 72, dated November 15, 1996.

TABLE 3—Continued

CF6–50 SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–888, Revision 5, dated November 7, 1994.	70–32–09, Revision 74, dated May 1, 1998.	70–32–10, Revision 74, dated May 1, 1998.	70–32–13, Revision 73, dated November 1, 1997.	70–32–14, Revision 73, dated November 1, 1997.
SB 72–888, Revision 6, dated December 22, 1995.	.....	70–32–10, Revision 75, dated December 15, 1998.	70–32–13, Revision 75, dated December 15, 1998.	70–32–14, Revision 75, dated December 15, 1998.
SB 72–1000, Original, dated December 14, 1990.	.....	.....	70–32–13, TR 70–41, dated February 10, 1999.	70–32–14, TR 70–42 dated February 10, 1999.
SB 72–1000, Revision 1, dated March 28, 1991.	.....	.....	70–32–13, Revision 76, dated May 15, 1999.	70–32–14, Revision 76, dated May 15, 1999.
SB 72–1000, Revision 2, dated September 9, 1993.	.....	.....	70–32–17, TR 70–39, dated December 15, 1998.	70–32–18, TR 70–40, dated December 15, 1998.
SB 72–1000, Revision 3, dated December 22, 1995.	.....	.....	70–32–17, Revision 76, dated May 15, 1999.	70–32–18, Revision 76, dated May 15, 1999.
SB 72–1108, Original, dated November 6, 1995.	.....	.....	70–32–17, TR 70–47, dated October 28, 1999.	70–32–18, TR 70–48, dated October 28, 1999.
SB 72–1108, Revision 1, dated July 29, 1996.	.....	.....	.....	
ASB 72–A1108, Revision 2, dated October 28, 1999.	.....	.....	.....	
ASB 72–A1108, Revision 3, dated November 12, 1999.	.....	.....	.....	
ASB 72–A1108, Revision 4, dated June 6, 2001.	.....	.....	.....	

(i) For spools with greater than 3,500 cycles-since-new (CSN) on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN, on the effective date of this AD, inspect at the first piece-part exposure (PPE) after 1,000 CSN or by 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected in accordance with the requirements of ASB CF6–50 72–A1131, Revision 3, dated June 6, 2001, or an earlier revision of ASB 72–A1131 or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, at the first PPE after 1,000 CSN, but not later than 4,000 additional cycles in-service (CIS) after the effective date of this AD.

(3) For spools that have not been inspected in accordance with the requirements of ASB CF6–50 72–A1157, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A1157, inspect the stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB 72–A1157, Revision 3 dated January 31, 2002, at the earliest of:

(i) The first PPE after 1000 CSN, or

(ii) The first HPC rotor exposure after 1000 CSN, or

(iii) The next required inspection to ASB72–A1108, Revision 4, dated June 6, 2001.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB 72–A1108, Revision 4, dated June 6, 2001, and the stage 3–5 dovetail slot bottoms in accordance with ASB 72–A1157, Revision 3, dated January 31, 2002, at the earliest of:

(i) Each PPE with more than 1,000 cycles-since-last-inspection (CSLI) and 3,500 CSN, or

(ii) From July 29, 2001 through January 27, 2003, before the cycle limits of Table 4.

TABLE 4

CSN at last inspection	Reinspect by
(A) 6,000 or fewer CSN	3,500 CSLI
(B) 6,001 to 7,000 CSN	9,500 CSN
(C) 7,001 to 8,000 CSN	2,500 CSLI
(D) 8,001 to 8,500 CSN	10,500 CSN
(E) 8,501 or more CSN	2,000 CSLI

(iii) After January 27, 2003, before the cycle limits of Table 5.

TABLE 5

CSN at last inspection	Reinspect by
(A) 5,000 or fewer CSN	3,500 CSLI
(B) 5,001 to 5,500 CSN	8,500 CSN
(C) 5,501 to 6,500 CSN	3,000 CSLI
(D) 6,501 to 7,000 CSN	9,500 CSN
(E) 7,001 to 8,000 CSN	2,500 CSLI
(F) 8,001 to 8,500 CSN	10,500 CSN

TABLE 5—Continued

CSN at last inspection	Reinspect by
(G) 8,501 or more CSN	2,000 CSLI

(5) If inspection findings equal or exceed the reject limits established by ASB 72–A1108, Revision 4, dated June 6, 2001, or ASB 72–A1131, Revision 3, dated June 6, 2001, or ASB 72–A1157, Revision 3, dated January 31, 2002; replace spool before further flight.

CF6–50 13-inch billet spools

(b) For CF6 HPC Rotor Stage 3–9 Spool, P/N's 9136M89G03, 9136M89G07, 9136M89G09, 9136M89G17, 9136M89G18, 9253M85G01, and 9136M89G08 with serial numbers that are not listed in Table 2, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A1108, Revision 4, dated June 6, 2001 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table

3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A1108, Revision 4, dated June 6, 2001, by the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first engine shop visit (ESV) after 4,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 4,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, or an earlier revision of ASB 72–A1131, or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, by the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A1157, inspect the stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, by the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB 72–A1108, Revision 4, dated June 6, 2001, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 4,000 CSN, or

(ii) Each ESV with more than 2,000 CSLI and 4,000 CSN, or

(iii) Before 4,000 CSLI.

(6) If inspection findings equal or exceed the reject limits established by ASB 72–A1108, Revision 4, dated June 6, 2001; or ASB 72–A1131, Revision 3, dated June 6, 2001; or ASB 72–A1157, Revision 3, dated January 31, 2002; replace spool before further flight.

CF6–50 9&10-inch billet spools

(c) For CF6 HPCR stage 3–9 spool, P/N's 9136M89G19, 9136M89G21, 9136M89G22 and 9136M89G27, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect the hub and bore in accordance with ASB CF6–50 72–A1108, Revision 4, dated June 6, 2001 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD, and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect the hub and bore in accordance with ASB CF6–50 72–A1108, Revision 4, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001 through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, or an earlier revision of ASB 72–A1131, or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A1157, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, reinspect the hub and bore in accordance with the requirements of ASB 72–A1108, Revision 4, dated June 6, 2001, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of the following Table 6, or:

TABLE 6

CSN at last inspection	Reinspect by
(A) 3,500 or fewer CSN	7,000 CSN
(B) 3,501 to 6,000 CSN	3,500 CSLI
(C) 6,001 to 7,000 CSN	9,500 CSN
(D) 7,001 to 8,000 CSN	2,500 CSLI
(E) 8,001 to 8,500 CSN	10,500 CSN
(F) 8,501 or more CSN	2,000 CSLI

(iii) After January 27, 2003, before the cycle limits of Table 5.

(6) If inspection findings equal or exceed the reject limits established by ASB 72–A1108, Revision 4, dated June 6, 2001; or ASB 72–A1131, Revision 3, dated June 6, 2001; or ASB 72–A1157, Revision 3, dated January 31, 2002; replace spool before further flight.

(7) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 9136M89G19, 9136M89G21, 9136M89G22 and 9136M89G27, installed where the spool has 10,500 or more CSN.

CF6–508-inch billet 2-piece spools

(d) For CF6 HPCR stage 3–9 spool, P/N 9136M89G29, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 3; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A1108, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, or an earlier revision of ASB 72–A1131, or SB 72–1131, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A1131, Revision 3, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A1157, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A1157, Revision 3, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(4) If inspection findings equal or exceed the reject limits established by ASB 72–A1108, Revision 4, dated June 6, 2001; or ASB 72–A1131, Revision 3, dated June 6, 2001; or ASB 72–A1157, Revision 3, dated January 31, 2002; replace spool before further flight.

CF6–80A 16-inch billet spools

(e) For CF6 HPCR stage 3–9 spool, P/N's 9136M89G10 with SN's MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, or MPON4253, do the following:

Initial Inspection

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of the following Table 7; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB 72 A0678, Revision 4, dated June 6, 2001, and the following compliance times:

TABLE 7

CF6–80A SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–500, Revision 3, dated March 19, 1991	70–32–09, Revision 71, dated October 1, 1995	70–32–10, Revision 71, dated October 1, 1995	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996	70–32–14, TR 70–26, dated August 26, 1996
SB 72–500, Revision 4, dated July 1, 1991	70–32–09, Revision 72, dated November 15, 1996	70–32–10, Revision 72, dated November 15, 1996	70–32–13, Revision 72, dated November 15, 1996	70–32–14, Revision 72, dated November 15, 1996
SB 72–500, Revision 5, dated November 7, 1994	70–32–09, Revision 74, dated May 1, 1998	70–32–10, Revision 74, dated May 1, 1998	70–32–13, Revision 73, dated November 1, 1997	70–32–14, Revision 73, dated November 1, 1997
SB 72–500, Revision 6, dated December 22, 1995		70–32–10, Revision 75, dated December 15, 1998	70–32–13, Revision 75, dated December 15, 1998	70–32–14, Revision 75, dated December 15, 1998
SB 72–583, Original, dated December 20, 1990			70–32–13, TR 70–41, dated February 10, 1999	70–32–14, TR 70–42, dated February 10, 1999
SB 72–583, Revision 1, dated March 18, 1991			70–32–13, Revision 76, dated May 15, 1999	70–32–14, Revision 76, dated May 15, 1999
SB 72–583, Revision 2, dated July 15, 1991			70–32–17, TR 70–39, dated December 15, 1998	70–32–18, TR 70–40, dated December 15, 1998
SB 72–583, Revision 3, dated July 24, 1991			70–32–17, Revision 76, dated May 15, 1999	70–32–18, Revision 76, dated May 15, 1999
SB 72–583, Revision 4, dated September 15, 1993			70–32–17, TR 70–47, dated October 28, 1999	70–32–18, TR 70–48, dated October 28, 1999
SB 72–583, Revision 5, dated December 22, 1995				
SB 72–678, Original, dated November 6, 1995				
SB 72–678, Revision 1, dated July 29, 1996				
ASB 72–A678, Revision 2, dated October 28, 1999				
ASB 72–A678, Revision 3, dated November 12, 1999				
ASB 72–A0678, Revision 4, dated June 6, 2001				

(i) For spools with greater than 3,500 CSN on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN on the effective date of this AD, inspect at the first PPE after 1,000 CSN or within 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, or an earlier revision of ASB 72–A0691, or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS accumulated after the effective date of this AD.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, or an earlier revision of ASB 72–A0719, inspect thestage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB 72–A0678, Revision 4, dated June 6, 2001.

Repetitive Inspections

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, reinspect the hub and bore in accordance with the requirements of ASB 72–A0678, Revision 4, dated June 6, 2001; and the dovetail slot bottoms in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001 through January 27, 2003 before the cycle limits of Table 4, or

(iii) After January 27, 2003, before the cycle limits of Table 5.

(5) If inspection findings equal or exceed the reject limits established by ASB 72–A0678, Revision 4, dated June 6, 2001; or ASB 72–A0691, Revision 4, dated June 6, 2001; or ASB A0719, Revision 4, dated January 31, 2002; replace spool before further flight.

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool P/N 9136M89G10 with serial numbers (SN's) MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, or MPON4253, installed where the spool has 10,500 or more CSN.

CF6–80A 13-inch billet spools

(f) For all other CF6 HPCR stage 3–9 spools, P/N 9136M89G10, with SN's that are not listed in paragraph (e) of this AD, and P/N 9136M89G11, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the

ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 5,000 CSN or

(iii) From July 29, 2001, through January 27, 2003 before 7,000 CSN, and after January 27, 2003, before 5,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, or an earlier revision of ASB 72–A0691, or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, or an earlier revision of ASB 72–A0719 inspect the dovetail slot bottom in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) Spools installed in CF6–80A1 and CF6–80A3 engines that were inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with alert ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) Each ESV with more than 2,000 CSLI and 5,000 CSN, or

(iii) Within 4,000 CSLI and more than 5,000 CSN.

(6) Spools installed in CF6–80A and CF6–80A2 engines previously inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) Each ESV with more than 1,500 CSLI and 5,000 CSN, or

(iii) Within 4,000 CSLI and more than 5,000 CSN.

(7) If inspection findings equal or exceed the reject limits established by ASB 72–A0678, Revision 4, dated June 6, 2001; or ASB 72–A0691, Revision 4, dated June 6, 2001; or ASB A0719, Revision 4, dated January 31, 2002; replace spool before further flight.

CF6–80A 9 and 10-inch billet spools

(g) For CF6 HPCR stage 3–9 spools, P/N's 9136M89G20, 9136M89G21, 9136M89G22 and 9136M89G27, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001 before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 5,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, or an earlier revision of ASB 72–A0691, or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

(4) For spools that have not been inspected in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, or an earlier revision of ASB 72–A0719 inspect the dovetail slot bottom in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(5) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB CF6–50 72–A0678, Revision 4, dated June 6, 2001, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 5,000 CSN, or

(ii) From July 29, 2001 through January 27, 2003, before the cycle limits of Table 6.

(iii) After January 27, 2003, before the cycle limits of the following Table 8:

TABLE 8

CSN at last inspection	Reinspect by
(A) 1,500 or fewer CSN	5,000 CSN
(B) 1,501 to 5,000 CSN	3,500 CSLI
(C) 5,001 to 5,500 CSN	8,500 CSN
(D) 5,501 to 6,501 CSN	3,000 CSLI
(E) 6,501 to 7,000 CSN	9,500 CSN
(F) 7,001 to 8,000 CSN	2,500 CSLI
(G) 8,001 to 8,500 CSN	10,500 CSN
(H) 8,501 or more CSN	2,000 CSLI

(6) If inspection findings equal or exceed the reject limits established by ASB 72–A0678, Revision 4, dated June 6, 2001; or ASB 72–A0691, Revision 4, dated June 6, 2001; or ASB A0719, Revision 4, dated January 31, 2002; replace spool before further flight.

(7) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 9136M89G20, 9136M89G21, 9136M89G22 and 9136M89G27, installed where the spool has 10,500 or more CSN.

CF6–80A 8-Inch Billet 2-Piece Spools

(h) For CF6 HPCR stage 3–9 spool, P/N 9136M89G28, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 7; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB 72–A0678, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, or an earlier revision of ASB 72-A0691, or SB 72–0691, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0691, Revision 4, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, or an earlier revision of ASB 72–A0719 inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A0719, Revision 4, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(4) If inspection findings equal or exceed the reject limits established by ASB 72–A0678, Revision 4, dated June 6, 2001; or ASB 72–A0691, Revision 4, dated June 6, 2001; or ASB 72–A0719, Revision 4, dated January 31, 2002; replace spool before further flight.

CF6–80C2 13-inch billet spools

(i) For CF6 HPCR stage 3–9 spool, P/N's 1781M52P01, 1854M95P02, 1854M95P05 and 9380M28P05, do the following:

Initial Inspection

(1) If the spool has not already been inspected using one of the ASB's or SB's

listed in Column A of the following Table 9; OR a combination of one procedure from Column B and one from Column C; OR a combination of one procedure from Column D and one from Column E, inspect hub and bore in accordance with ASB 72–A0812, Revision 3, dated June 6, 2001, and the following compliance times:

TABLE 9

CF6–80C2 SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
SB 72–418, Revision 2, May 14, 1991	70–32–09, Revision 71, dated October 1, 1995	70–32–10, Revision 71, dated October 1, 1995	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996	70–32–14, TR 70–26, dated August 26, 1996
SB 72–418, Revision 3, November 7, 1994	70–32–09, Revision 72, dated November 15, 1996	70–32–10, Revision 72, dated November 15, 1996	70–32–13, Revision 72, dated November 15, 1996	70–32–14, Revision 72, dated November 15, 1996
SB 72–418, Revision 4, December 22, 1995	70–32–09, Revision 74, dated May 1, 1998	70–32–10, Revision 74, dated May 1, 1998	70–32–13, Revision 73, dated November 1, 1997	70–32–14, Revision 73, dated November 1, 1997
SB 72–758, Original, dated November 7, 1994		70–32–10, Revision 75, dated December 15, 1998	70–32–13, Revision 75, dated December 15, 1998	70–32–14, Revision 75, dated December 15, 1998
SB 72–758, Revision 1, dated December 22, 1995			70–32–13, TR 70–41, dated February 10, 1999	70–32–14, TR 70–42, dated February 10, 1999
SB 72–812, Original, dated November 6, 1995			70–32–13, Revision 76, dated May 15, 1999	70–32–14, Revision 76, dated May 15, 1999
SB 72–812, Revision 1, dated January 30, 1998			70–32–17, TR 70–39, dated December 15, 1998	70–32–18, TR 70–40, dated December 15, 1998
ASB 72–A0812, Revision 2, dated October 28, 1999			70–32–17, Revision 76, dated May 15, 1999	70–32–18, Revision 76, dated May 15, 1999
ASB 72–A0812, Revision 3, dated June 6, 2001			70–32–17, TR 70–47, dated October 28, 1999	70–32–18, TR 70–48, dated October 28, 1999

(i) For spools with greater than 3,500 CSN on the effective date of this AD, inspect before further flight.

(ii) For spools with 3,500 or fewer CSN on the effective date of this AD, inspect at the first PPE after 1,000 CSN or before 3,500 CSN, whichever occurs earlier.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A0848, Revision 7, dated June 6, 2001, or an earlier revision of ASB 72–A0848, or SB 72–0848, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0848, Revision 7, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1000 CSN, or

(ii) The next required inspection to ASB 72–A0812, Revision 3, dated June 6, 2001, or

(iii) From July 29, 2001 through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB 72–A0812, Revision 3, dated June 6, 2001

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect the hub and bore in accordance with ASB 72–A812, Revision 3, dated June 6, 2001, the web and hub-to-web transition areas in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, and the stage 3–5 dovetail slot bottoms in accordance with ASB 72–A0934 Revision 3, dated January 31, 2002, at the earliest of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 4.

(iii) After January 27, 2003, before the cycle limits of Table 5.

(5) If inspection findings equal or exceed the reject limits established by ASB 72–A0812, Revision 3, dated June 6, 2001, or ASB 72–A0848, Revision 7, dated June 6, 2001, or ASB 72–A0934, Revision 3, dated January 31, 2002; replace spool before further flight.

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1781M52P01, 1854M95P02, 1854M95P05 and 9380M28P05, installed where the spool has 10,500 or more CSN.

CF6–80C2 9&10-inch billet spools

(j) For CF6 HPCR stage 3–9 spool, P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1854M95P01, 1854M95P03, 1854M95P04, 1854M95P06 and 1854M95P07, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN on the effective date of this AD and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, and if the spool has not been inspected in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, or an earlier revision of ASB 72–A0848, or SB 72–0848, inspect the hub and bore in accordance with ASB CF6–50 72–A0812, Revision 3, dated June 6, 2001; and the web and hub-to-web transition areas in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, before further flight.

(2) If the spool has 7,000 or fewer CSN on the effective date of this AD, and has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, and if the spool has not been inspected in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, or an earlier revision of ASB 72–A0848, or SB 72–0848, inspect the hub and bore in accordance with ASB CF6–50 72–A0812, Revision 3, dated June 6, 2001; and the web and hub-to-web transition areas in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31,

2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) Within 4,000 additional CIS after the effective date of this AD.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect the hub and bore in accordance with the requirements of ASB 72–A0812, Revision 3, dated June 6, 2001, and the web and hub-to-web transition areas in accordance with ASB 72–A0848, Revision 7, dated June 6, 2001, at the earlier of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 6, and after January 27, 2003, before the cycle limits of Table 5.

(5) If inspection findings equal or exceed the reject limits established by ASB 72–A0812, Revision 3, dated June 6, 2001, or ASB 72–A0848, Revision 7, dated June 6, 2001, or ASB 72–A0934, Revision 3, dated January 31, 2002; replace spool before further flight.

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1854M95P01, 1854M95P03, 1854M95P04, 1854M95P06 and 1854M95P07, installed where the spool has 10,500 or more CSN.

CF6–80C2 8-inch billet 2-piece spools

(k) For CF6 HPCR stage 3–9 spool, P/N's 1333M66G10 and 1854M95P08, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB 72–A0812, Revision 3, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A0848, Revision 7, dated June 6, 2001, or an earlier revision of ASB 72–A0848, or SB 72–0848, inspect the web and hub-to-web transition areas in accordance with the requirements of ASB 72–A0848, Revision 7, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A0934, inspect the stage 3–5 dovetail slot bottom in accordance with the requirements of ASB 72–A0934, Revision 3, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(4) If inspection findings equal or exceed the reject limits established by ASB 72–A0812, Revision 3, dated June 6, 2001, or ASB 72–A0848, Revision 7, dated June 6, 2001, or ASB 72–A0934, Revision 3, dated January 31, 2002; replace spool before further flight.

CF6–80E1 9&10-inch billet spools

(1) For CF6 HPCR stage 3–9 spool, P/N's 1669M22G01, 1669M22G03, 1782M22G01 and 1782M22G02, do the following:

Initial Inspection

(1) If the spool has greater than 7,000 CSN and has not already been inspected using one of the ASB's listed in Column A of the following Table 10; OR a combination AND of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, and if the spool has not been inspected in accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the hub and bore in accordance with ASB CF6–50 72–A0135, Revision 2, dated June 6, 2001; and the web and hub-to-web transition areas in accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, before further flight.

TABLE 10

CF6–80E1 SB No.	Procedures (70–32–XX) in standard practices manual GEK9250			
Column A	Column B	Column C	Column D	Column E
ASB 72–A0135, dated August 13, 1998	70–32–09, Revision 71, dated October 1, 1995	70–32–10, Revision 71, dated October 1, 1995	70–32–13, Temporary Revision (TR), 70–25, dated August 26, 1996	70–32–14, TR 70–26, dated August 26, 1996
ASB 72–A0135, Revision 1, dated October 28, 1999	70–32–09, Revision 72, dated November 15, 1996	70–32–10, Revision 72, dated November 15, 1996	70–32–13, Revision 72, dated November 15, 1996	70–32–14, Revision 72, dated November 15, 1996
ASB 72–A0135, Revision 2, dated June 6, 2001	70–32–09, Revision 74, dated May 1, 1998	70–32–10, Revision 74, dated May 1, 1998	70–32–13, Revision 73, dated November 1, 1997	70–32–14, Revision 73, dated November 1, 1997
		70–32–10, Revision 75, dated December 15, 1998	70–32–13, Revision 75, dated December 15, 1998	70–32–14, Revision 75, dated December 15, 1998
			70–32–13, TR 70–41, dated February 10, 1999	70–32–14, TR 70–42, dated February 10, 1999
			70–32–13, Revision 76, dated May 15, 1999	70–32–14, Revision 76, dated May 15, 1999
			70–32–17, TR 70–39, dated December 15, 1998	70–32–18, TR 70–40, dated December 15, 1998
			70–32–17, Revision 76, dated May 15, 1999	70–32–18, Revision 76, dated May 15, 1999
			70–32–17, TR 70–47, dated October 28, 1999	70–32–18, TR 70–48, dated October 28, 1999

(2) If the spool has 7,000 or fewer CSN and has not already been inspected using one of the ASB's listed in Column A of Table 10; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, and if the spool has not been inspected in accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the hub and bore in accordance with ASB CF6–50 72–A0135, Revision 2, dated June 6, 2001; and the web and hub-to-web transition areas in

accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 3,000 CSN, or

(iii) From July 29, 2001, through January 27, 2003, before 7,000 CSN, and after January 27, 2003, before 3,500 CSN.

(3) Spools not previously inspected in accordance with the requirements of ASB 72–A0137, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–0137, or SB 72–0137, inspect stage 3–5 dovetail slot bottoms in accordance with the requirements of ASB 72–A0137, Revision 3, dated January 31, 2002, at the earliest of:

(i) The first PPE after 1,000 CSN, or

(ii) The first HPCR exposure after 1,000 CSN, or

(iii) The next required inspection to ASB 72–A0135, Revision 2, dated June 6, 2001.

Repetitive Inspection

(4) For spools that have already been inspected using one of the ASB's listed in Column A of Table 10; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect the hub and bore in accordance with the requirements of ASB 72–A0135, Revision 2, dated June 6, 2001, the web and hub-to-web transition areas in accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, and the stage 3–5 dovetail slot bottoms in accordance with ASB 72–A0137, Revision 3, dated January 31, 2002, at the earlier of:

(i) Each PPE with more than 1,000 CSLI and 3,500 CSN, or

(ii) From July 29, 2001, through January 27, 2003, before the cycle limits of Table 6, and after January 27, 2003, before the cycle limits of Table 5.

(5) If inspection findings equal or exceed the reject limits established by ASB 72–A0135, Revision 2, dated June 6, 2001; ASB 72–A0126, Revision 5, dated June 6, 2001; and ASB 72–A0137, Revision 3, dated January 31, 2002; replace spool before further flight.

(6) After the effective date of this AD, do not install any engine that has an HPCR stage 3–9 spool, P/N's 1669M22G01, 1669M22G03, 1782M22G01 and 1782M22G02, installed where the spool has 10,500 or more CSN.

CF6–80E1 8-inch billet 2-piece spools

(m) For CF6 HPCR stage 3–9 spool, P/N 1782M22G04, do the following:

(1) If the spool has not already been inspected using one of the ASB's or SB's listed in Column A of the following Table 9; OR a combination of one procedure from Column B AND one from Column C; OR a combination of one procedure from Column D AND one from Column E, inspect hub and bore in accordance with ASB 72–A0135, Revision 2, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(2) For spools that have not been inspected in accordance with the requirements of ASB 72–A0126, Revision 5, dated June 6, 2001, or an earlier revision of ASB 72–A0126, or SB 72–0126, inspect the web and hub-to-web transition areas in accordance with ASB 72–A0126, Revision 5, dated June 6, 2001, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(3) For spools that have not been inspected in accordance with the requirements of ASB 72–A0137, Revision 3, dated January 31, 2002, or an earlier revision of ASB 72–A0137, or SB 72–0137, inspect the stage 3–5 dovetail slot bottoms in accordance with ASB 72–A0137, Revision 3, dated January 31, 2002, at the earlier of:

(i) The first PPE after 1,000 CSN, or

(ii) The first ESV after 6,000 CSN.

(4) If inspection findings equal or exceed the reject limits established by ASB 72–A0135, Revision 2, dated June 6, 2001; ASB 72–A0126, Revision 5, dated June 6, 2001; and ASB 72–A0137, Revision 3, dated January 31, 2002; replace spool before further flight.

Reporting Requirements

(n) Within five calendar days of inspection, report the results of inspections that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive park, Burlington, MA 01803–5299; telephone (781) 238–7147. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Part Number
(2) Serial Number
(3) Spool CSN
(4) Spool CSLI
(5) Date and location where inspection was done.

Definitions

(o) For the purpose of this AD, the following definitions apply:

(1) A module level exposure is a separation of the fan module from the engine.

(2) An HPC rotor exposure is a HPC top or bottom case removal.

(3) A PPE is a disassembly and removal of the stage 3–9 spool from the HPCR structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the spool.

(4) An ESV is the introduction of an engine into the shop where the separation of a major engine flange will occur after the effective date of this AD.

(5) The following maintenance actions, or any combination, are not considered ESV's for requiring repeat inspections:

(i) Introduction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance.

(ii) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk.

(iii) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame.

(iv) Introduction of an engine into a shop solely for replacement of the Accessory and/or Transfer Gearboxes.

(v) Introduction of an engine into a shop solely for replacement of the Fan Forward Case.

Alternative Methods of Compliance

(p) 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

(q) 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 June 5, 2002.

Francis A. Favara,

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

[FR Doc. 02–14700 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–84–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 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 all McDonnell Douglas Model MD–90–30 airplanes. This proposal would require one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. This action is necessary to prevent electrical arcing and/or heat-damaged wiring due to improper wire installations or maintenance practices, which could result in fire and smoke in various areas of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 29, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–84–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–84–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT:

Technical Information: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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–84–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–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has become aware of several instances of damaged wiring insulation and chafed wiring in various areas on McDonnell Douglas Model MD–90–30 airplanes. Investigation revealed that such damage and chafing may be due to improper wire installations or maintenance practices. This condition, if not corrected, could lead to electrical arcing and/or heat-damaged wiring, which could result in fire and smoke in various areas of the airplane.

Other Relevant Rulemaking

The FAA has previously issued AD 2000–11–01, amendment 39–11749 (65 FR 34321, May 26, 2000), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. That AD requires determining whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacing MPET insulation blankets with new insulation blankets. The FAA recommends that the actions that would be required by this proposed AD be accomplished after accomplishing the replacement required by AD 2000–11–01. This proposed AD would not affect the current requirements of that AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following service bulletins:

- Boeing Service Bulletin MD90–24–066, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the flight compartment and forward drop ceiling area.
- Boeing Service Bulletin MD90–24–067, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the electronic/electrical (E/E) compartment.
- Boeing Service Bulletin MD90–24–068, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the forward passenger compartment from stations Y=260.000 to Y=902.000.
- Boeing Service Bulletin MD90–24–069, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the aft passenger compartment from stations Y=902.000 to Y=1395.000.
- Boeing Service Bulletin MD90–24–070, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the forward and mid cargo compartments from stations Y=218.000 to Y=845.000.
- Boeing Service Bulletin MD90–24–071, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the aft cargo compartment from stations Y=1064.000 to Y=1369.000.
- Boeing Service Bulletin MD90–24–072, including Appendix A, Revision 01, dated February 8, 2001, which describes procedures for a one-time visual inspection of all electrical wiring installations in the forward accessory compartment from stations Y=41.000 to Y=70.000.

All of these service bulletins also describe procedures for corrective actions that may be necessary. These include repairing cracked, split, or torn wiring insulation; re-attaching nylon (caterpillar) grommets; installing smaller-sized clamps; adjusting, replacing, or tightening sta-straps; repositioning certain wiring or clamps; tightening or securing clamps, terminals, or wire bundles; re-torquing screw terminals of the flag lug bus bar; repairing or replacing certain wiring, terminals, splices, or connectors; installing protective sleeving over wiring; and installing a silicone glass cloth over conduit ends. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and Proposed AD

The service bulletins specify accomplishment of ''visual'' inspections. The FAA has determined that the inspections described in the service bulletins constitute ''detailed inspections.'' Therefore, this proposed AD would require accomplishment of detailed inspections. Note 3 of this proposed AD defines such inspections.

Also, Appendix A of each service bulletin contains a form to report inspection findings. This proposed AD would NOT require such reports to be submitted to the FAA.

Cost Impact

There are approximately 115 airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 49 work hours per airplane to accomplish all of the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $73,500, or $2,940 per airplane.

Warranty remedies may be available from the airplane manufacturer for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–84–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

Note 2: The FAA recommends that the actions required by this AD be accomplished after the replacement of the metallized polyethyleneteraphthalate (MPET) insulation blankets required by AD 2000–11–01, amendment 39–11749.

To prevent electrical arcing and/or heat-damaged wiring due to improper wire installations or maintenance practices, which could result in fire and smoke in various areas of the airplane, accomplish the following:

One-Time Detailed Inspections

(a) Within 5 years after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of this AD.

(1) Do a one-time detailed inspection of all electrical wiring installations in the flight compartment and forward drop ceiling area, according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–066, including Appendix A, Revision 01, dated February 8, 2001.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 4: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–066, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(1) and (b)(1) of this AD, as applicable.

(2) Do a one-time detailed inspection of all electrical wiring installations in the

electronic/electrical (E/E) compartment according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–067, including Appendix A, Revision 01, dated February 8, 2001.

Note 5: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–067, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(2) and (b)(2) of this AD, as applicable.

(3) Do a one-time detailed inspection of all electrical wiring installations in the forward passenger compartment from stations Y=260.000 to Y=902.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–068, including Appendix A, Revision 01, dated February 8, 2001.

Note 6: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–068, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(3) and (b)(3) of this AD, as applicable.

(4) Do a one-time detailed inspection of all electrical wiring installations in the aft passenger compartment from stations Y=902.000 to Y=1395.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–069, including Appendix A, Revision 01, dated February 8, 2001.

Note 7: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–069, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(4) and (b)(4) of this AD, as applicable.

(5) Do a one-time detailed inspection of all electrical wiring installations in the forward and mid cargo compartments from stations Y=218.000 to Y=845.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–070, including Appendix A, Revision 01, dated February 8, 2001.

Note 8: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–070, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(5) and (b)(5) of this AD, as applicable.

(6) Do a one-time detailed inspection of all electrical wiring installations in the aft cargo compartment from stations Y=1064.000 to Y=1369.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–071, including Appendix A, Revision 01, dated February 8, 2001.

Note 9: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–071, including Appendix A, dated July 28, 2000, are acceptable for compliance with paragraphs (a)(6) and (b)(6) of this AD, as applicable.

(7) Do a one-time detailed inspection of all electrical wiring installations in the forward accessory compartment from stations Y=41.000 to Y=70.000 according to the Accomplishment Instructions of Boeing Service Bulletin MD90–24–072, including Appendix A, Revision 01, dated February 8, 2001.

Note 10: Inspections and corrective actions done before the effective date of this AD according to the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD90–24–072, including Appendix A, dated July 27, 2000, are acceptable for compliance with paragraphs (a)(7) and (b)(7) of this AD, as applicable.

Corrective Action

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD: Before further flight, accomplish the applicable corrective action(s) according to the Accomplishment Instructions of the applicable service bulletins listed in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD. Corrective actions that may be necessary include repairing cracked, split, or torn wiring insulation; re-attaching nylon (caterpillar) grommets; installing smaller-sized clamps; adjusting, replacing, or tightening sta-straps; repositioning certain wiring or clamps; tightening or securing clamps, terminals, or wire bundles; re-torquing screw terminals of the flag lug bus bar; repairing or replacing certain wiring, terminals, splices, or connectors; installing protective sleeving over wiring; and installing a silicone glass cloth over conduit ends.

(1) Boeing Service Bulletin MD90–24–066, including Appendix A, Revision 01, dated February 8, 2001.

(2) Boeing Service Bulletin MD90–24–067, including Appendix A, Revision 01, dated February 8, 2001.

(3) Boeing Service Bulletin MD90–24–068, including Appendix A, Revision 01, dated February 8, 2001.

(4) Boeing Service Bulletin MD90–24–069, including Appendix A, Revision 01, dated February 8, 2001.

(5) Boeing Service Bulletin MD90–24–070, including Appendix A, Revision 01, dated February 8, 2001.

(6) Boeing Service Bulletin MD90–24–071, including Appendix A, Revision 01, dated February 8, 2001.

(7) Boeing Service Bulletin MD90–24–072, including Appendix A, Revision 01, dated February 8, 2001.

Note 11: Appendix A of the service bulletins referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD contains a form to report inspection findings. This AD does NOT require such reports to be submitted to the FAA.

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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Issued in Renton, Washington, on June 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–14699 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–08]

RIN 2120–AA66

Proposed Establishment of Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the rulemaking proposal published in the **Federal Register** on February 13, 2001. In that action, the FAA proposed to establish two Federal airways in Alaska. The FAA has determined that withdrawal of the proposed rule is warranted since the proposed routes failed flight inspection due to weak navigational signals.

DATES: June 12, 2002.

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

SUPPLEMENTARY INFORMATION: On February 13, 2001, a proposed rule was published in the **Federal Register** that would have amended 14 CFR part 71 to establish two Federal airways in Alaska (66 FR 9990). Interested parties were invited to participate in the rulemaking process by submitting written data, views, or arguments regarding the

proposal. No comments were received on the proposal.

Due to the weak navigational signal affecting these proposed routes, they could not pass flight inspection. The FAA is therefore withdrawing this proposed rule.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 00–AAL–08, as published in the **Federal Register** on February 13, 2001 (66 FR 9990), is hereby withdrawn.

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

Issued in Washington, DC, on June 4, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–14687 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act, Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a new Internal Revenue Service (IRS) system of records, the Employee Complaint and Allegation Referral Records, IRS 00.007, from certain provisions of the Privacy Act.

DATES: Comments must be received no later than July 12, 2002.

ADDRESSES: Please submit comments to the Director, Commissioner's Complaint Processing and Analysis Group, 1111 Constitution Avenue, N:ADC:C, NW., Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room also located at 1111 Constitution Avenue, NW. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: Jim D'Elia, Commissioner's Complaint Processing and Analysis Group, N:ADC:C, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone number (202) 622–5212.

SUPPLEMENTARY INFORMATION: The Commissioner of the IRS has established a Complaint Processing and Analysis Group in the IRS National Headquarters. The purpose of the Group is (1) to promote public confidence in the integrity of the IRS; (2) to identify and monitor complaints, allegations and other information received concerning current and former IRS employees and IRS contractors; (3) to ensure that the IRS provides a timely and appropriate response to those complaints, allegations and other information; (4) to advise complainants of the status and results of investigations or inquiries conducted as a result of the IRS's receipt of their complaints, and (5) to compile summary reports. The reports will provide non-identifying information about the type of complaints, allegations and resulting actions concerning current and former IRS employees and IRS contractors and will be distributed to IRS and Department of the Treasury executives, managers and employees, the Congress and the public. Specifically, section 1211 of Public Law 104–168, Taxpayer Bill of Rights 2 (TBOR2), requires that the Secretary of the Treasury submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of instances involving the misconduct of employees of the IRS. Section 3701 of Public Law 105–206, the IRS Restructuring and Reform Act (RRA) of 1998 requires that the Secretary or the Secretary's delegate maintain records of taxpayer complaints of misconduct by IRS employees on an individual employee basis to prepare the report required by section 1211 of TBOR2.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. To ensure appropriate and complete response to complaints or allegations, the Complaint Processing and Analysis Group will frequently need to forward complaints, allegations, or related information to the Treasury Inspector General for Tax Administration (TIGTA) for investigation to determine if there has been a violation of a rule, regulation, or statute. Copies of the information forwarded to TIGTA will be retained in the Employee Complaint and Allegation Referral Records pending completion of investigation by TIGTA. The results of investigation completed by TIGTA will also be retained in the Employee Complaint and Allegation Referral Records in accordance with the procedures in Internal Revenue Manual 1.15.2, Records Disposition Handbook.

The IRS is hereby giving notice of a proposed rule to exempt IRS 00.007, Employee Complaint and Allegation Referral Records, from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption is from provisions 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requested access to records, the agency procedures relating to access to records and the content of the information contained in such records and the civil remedies available

to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting this system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of an investigative file pertaining to such individual or to grant access to an investigative file pertaining to such individual could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and, disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the Employee Complaint and Allegation Referral Records to those relevant and necessary for identifying, monitoring, and responding to complaints, allegations and other information received concerning current and former IRS employees and IRS contractors. However, an exemption from the foregoing is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(iii) When information is received by the IRS relating to violations of law within the jurisdiction of other agencies, the IRS processes this information through IRS systems in order to forward the material to the appropriate agencies.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

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

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

Number	Name of system
* *	* * *
IRS 00.007	Employee Complaint and Allegation Referral Records
* *	* * *

Dated: May 20, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–14745 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–11–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–3417]

RIN 2115–AF60

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DOT.

ACTION: Proposed rulemaking; notice of public meetings.

SUMMARY: The Coast Guard announces three public meetings to receive comments on a notice of proposed rulemaking addressing the salvage and marine firefighting requirements for tank vessels transporting oil. The meetings will be held at three locations in order to allow for greater public involvement.

DATES: The public meetings will be held at the following locations:

Texas City, TX, July 9, 2002, from 9:30 a.m. to 4:00 p.m.

Philadelphia, PA, July 17, 2002, from 9:30 a.m. to 4:00 p.m.

Seattle, WA, July 25, 2002, from 9:30 a.m. to 4:00 p.m.

The meetings may conclude before the allotted time if all matters of discussion have been addressed.

ADDRESSES: The public meetings will be held at the following locations:

Texas City, TX—The Texas City/Charles T. Doyle Convention Center, 2010 5th Ave N., Stephen F. Austin Room, Texas City, TX 77590

Philadelphia, PA—U.S. Coast Guard Marine Safety Office, One Washington Avenue, Multi-Purpose Room, Philadelphia, PA 19147–4395

Seattle, WA—Henry M. Jackson Federal Building, 915 Second Ave., North Auditorium, Room 3448, Seattle, WA 98174–1067

This notice is available on the Internet at *http://dms.dot.gov* in the docket for this rulemaking [USCG–1998–3417].

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this proposed rulemaking or concerning any of the public meetings, please contact Lieutenant Douglas Lincoln, Office of Response, Response Operations Division, Coast Guard Headquarters, telephone 202–267–0448, or via e-mail at *DLincoln@comdt.uscg.mil*. If you have questions on viewing or submitting material(s) to the docket, please call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In a notice of proposed rulemaking (NPRM) that was published in the **Federal Register** on May 10, 2002 (67 FR 31868), entitled ''Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil,'' the Coast Guard stated our intention to hold public meetings, and we indicated that we would announce their locations and dates as soon as we had finalized the details of the meetings. In this notice we announce three public meetings to receive comments on the proposed rulemaking.

In the NPRM, we proposed to revise the vessel response plan salvage and marine firefighting requirements for tank vessels transporting oil. The revisions would clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes would assure that the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to, and including, the worst-case scenario. The proposed rulemaking would also set new response time requirements for each of the required salvage and marine firefighting services.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Douglas Lincoln at the telephone number indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold three public meetings regarding this proposed rulemaking on the following dates at the following locations:

Texas City, TX, July 9, 2002, from 9:30 a.m. to 4 p.m., at The Texas City/Charles T. Doyle Convention Center, 2010 5th Ave N., Stephen F. Austin Room, Texas City, TX 77590

Philadelphia, PA, July 17, 2002, from 9:30 a.m. to 4 p.m., at the U.S. Coast Guard Marine Safety Office, One Washington Avenue, Multi-Purpose Room, Philadelphia, PA 19147–4395

Seattle, WA, July 25, 2002, from 9:30 a.m. to 4:00 p.m., at the Henry M. Jackson Federal Building, 915 Second Ave., North Auditorium, Room 3448, Seattle, WA 98174–1067

The meetings may conclude before the allotted time if all matters of discussion have been addressed.

Summaries of comments made and lists of attendees will be available on the docket after each meeting concludes.

Dated: June 5, 2002.

J.G. Lantz,

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–14967 Filed 6–10–02; 3:05 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL08

Board of Veterans' Appeals: Speeding Appellate Review for Aging Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes amending the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that a case may be advanced on the Board's docket because of the appellant's advanced age. This change is necessary to speed the appellate process for the large group of aging veterans.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Fax comments to: (202) 273–9289. E-mail comments to: *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL08.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

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

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of VA's 58 regional offices, makes the initial decision on a claim. A claimant who is dissatisfied with an AOJ's decision may appeal to the Board.

America owes a great debt to its military service veterans. They defended our nation in times of war and kept watch in times of peace to keep new crises from developing. Unfortunately, our nation is now losing large numbers of these veterans each year. Barely 2,000 of the almost 5 million men and women who served in World War I and one-third of the 16 million who served in World War II still survive. Even a number of Korean War veterans are now in their seventies. Among all veterans, approximately 18% are age 75 or older. Twenty-seven percent of the veteran population is aged 70 or over. *See* ''Veteran Data & Information'' *<http://www.va.gov/vetdata/Demograhics/VPwelcome.htm>.* (**Note:** ''Demograhics'' is the spelling used at the site.) In 1995, a person who reaches age 65 in the United States has an average life expectancy of 17 years. ''Sixty-Five Plus in the United States'' at 1, SB/95–8, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (May 1995), available at *http://www.census.gov/apsd/www/statbrief/sb95_8.pdf.*

The process of obtaining veterans benefits can be protracted, particularly where benefits are initially denied and that denial is appealed up through VA's administrative appeal process and beyond into the judicial system. The claims adjudication and appellate systems provide a myriad of procedural protections which, added together, take a great deal of time to work through. Further, the appellate process normally functions on a ''first come, first served'' basis. The law requires that the Board consider and decide each appeal ''in regular order according to its place upon the docket.'' 38 U.S.C. 7107(a). While this is normally a just and orderly approach, we are concerned that aging veterans may not survive to see it through to the end. The same is true of

other aging appellants, such as the surviving spouses of deceased veterans.

Fortunately, the law also permits the Board, on motion, to advance cases for earlier consideration and determination under certain circumstances, including serious illness, severe financial hardship, and ''other sufficient cause shown.'' 38 U.S.C. 7107(a)(2). Because of the large numbers of appeals—on average, the Board receives 35,000–40,000 per year—the Board has taken a restrictive view of its authority to advance cases on the docket. The implementing regulation, at 38 CFR 20.900(c), currently specifies that ''other sufficient cause'' includes ''administrative error resulting in a significant delay in docketing the case.''

Given the age of our veteran population, we propose expanding this provision to permit advancement for earlier consideration by the Board because of the appellant's advanced age. For this limited purpose, VA proposes defining ''advanced age'' as 75 or more years of age. We chose age 75 for three reasons: First, it is an age at which a veteran is very near to his or her life expectancy. Second, it represents a segment of the veteran population—18%—large enough to provide meaningful relief, but not so large as to dilute the general rule of first come, first served. Third, the other bases for advancement on the docket in § 20.900(c), illness and financial hardship, adequately cover other exigent circumstances.

As with most other bases for advancing on the docket, we intend to rely primarily on motions filed by appellants and their representatives to alert the Board to situations where advancement based on advanced age would be appropriate. (Approximately 90% of appellants have representatives.) As the regulation defines ''advanced age'' (75 years) as good cause for advancement, all such motions should be granted. However, we welcome any comments from the public as to how best to implement this authority.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

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

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment 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. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: February 27, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 20 as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

2. Section 20.900(c) is revised to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(c) *Advancement on the docket.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. ''Other sufficient cause'' shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case or the advanced age of the appellant. For purposes of this Rule, ''advanced age'' is defined as 75 or more years of age. Such motions must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.,* a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

* * * * *

(Authority: 38 U.S.C. 7107, Pub. L. 103–446, Sec. 302)

[FR Doc. 02–14685 Filed 6–11–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7222–1]

RIN 2060–AJ71

Control of Air Pollution from New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to clarify, correct, amend, and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (February 10, 2000), hereinafter referred to as the Tier 2 rule. First, today's action would correct typographical errors and would make other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it would modify the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule would modify the Geographic Phase-in Area (GPA) program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it would allow an approved small refiner, under limited

circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it would amend certain provisions of the small refiner and Averaging, Banking, and Trading (ABT) programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance.

DATES: Written comments or requests for a public hearing must be received by July 12, 2002.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460.

Docket: Materials related to this rulemaking are available at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail *manners.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve corrections, amendments, and revisions to the Tier 2 rule (65 FR 6698, February 10, 2000). However, in the ''Rules and Regulations'' section of today's **Federal Register**, we are approving these corrections, amendments, and revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. The direct final rule will be effective on September 10, 2002, unless we receive adverse comment or a request for a public hearing by July 12, 2002. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

Regulated Entities

This proposal could affect you if you produce, distribute, or sell gasoline.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS Codes [a]	SIC Codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.
Industry	484220 484230	4212 4213	Gasoline Carriers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/ (Either select a desired date or use the Search feature.).

Tier 2/Gasoline Sulfur home page: http://www.epa.gov/otaq/tr2home.htm.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule 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 the rights and obligations of recipients thereof; or,
- 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, we have determined that

this proposed rule is not a ''significant regulatory action.''

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business refiner that had no more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1998 to January 1, 1999; and a corporate crude capacity less than or equal to 155,000 barrels per calendar day for 1999 [1]; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not have any adverse economic impact on small entities. Today's rule corrects, amends, and revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action corrects typographical errors and makes other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it modifies the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule modifies the GPA program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it allows an approved small refiner, under limited circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it amends certain provisions of the small refiner and ABT programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2073.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Certain small refiners may provide this requested information in order to for EPA to consider granting specific relief relating to the gasoline sulfur requirements. This relief would be in the form of an adjustment to one of the gasoline sulfur standards that apply to small refiners, the per-gallon cap sulfur standard. The information will allow EPA to assess the need for such relief and to grant the appropriate relief based on the small refiner's situation. This information will be provided voluntarily by letter and will be treated by EPA as Confidential Business Information.

EPA estimates that between one and five small refiners may request an adjustment in their per-gallon cap sulfur standards, and that a one-time effort of about two hours will be required to prepare the application letter. We estimate the total industry-wide burden to be less than $1000. 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.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we 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 for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The proposed rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposal will significantly or uniquely affect small governments.

[1] This definition of a small business refiner was established under the Tier 2 Rule. *See* § 80.225.

We have determined that this proposed rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of correcting, amending, and revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule would not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule have national applicability. Furthermore, today's proposed rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. The effect of today's rule is no more significant than the Tier 2 rule for tribes under the original provisions of the GPA program; under today's action, gasoline sold in certain tribal lands would be subject to a flat average standard of 150 ppm sulfur. Thus, Executive Order 13175 does not apply to this proposed rule.

F. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consult with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule clarifies and corrects certain provisions of an earlier rule that adopted national standards to control gasoline sulfur. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

G. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's proposed rule. The standards referenced in today's proposed rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards.

I. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to 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 proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this proposed rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

Statutory Provisions and Legal Authority

Statutory authority for the fuel controls set in today's proposed rule comes from section 211(c) of the CAA

(42 U.S.C. 7545(c)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposed rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–13803 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7228–6]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by the Nevada Department of Environmental Protection. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before July 12, 2002.

ADDRESSES: Mail written comments to Lisa McClain-Vanderpool, 75 Hawthorne St. (WST–2), San Francisco, CA 94105. You can examine copies of the materials submitted by Nevada during normal business hours at the following locations: U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, 415/947–4406; or Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710, 775/687–5872.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–2), 75 Hawthorne Street, San Francicso, CA 94105, Phone: (415) 972–3316.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: June 3, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–14630 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD–2002–12425]

RIN 2133–AB47

Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of the Merchant Marine Act, 1936, as Amended

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Recent legislation modified the Merchant Marine Act, 1936, as amended, by adding a new Section 1109, which authorizes the Secretary of Transportation to hold funds from Title XI obligors as collateral by depositing them with the United States Treasury and investing them in Treasury obligations. As a consequence, these funds need no longer be deposited in private banks. This notice of proposed rulemaking proposes changes to existing procedures to simplify, reduce costs of, and expedite Title XI closings.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than August 12, 2002.

ADDRESSES: Your comments should refer to docket number MARAD–2002–12425. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW., Washington, DC 20590. You may also submit them electronically via the Internet at *http://dmses.dot.gov/submit/*. You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., E.T., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Lorr, Assistant Chief Counsel for Ship Financing, at (202) 366–5882. You may send mail to Mr. Lorr at Maritime Administration, Office of Chief Counsel, Room 7221, 400 Seventh Street, SW., Washington, DC 20590. You may also e-mail Mr. Lorr at *richard.lorr@marad.dot.gov.*

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at

the address given above under **FOR FURTHER INFORMATION CONTACT.** You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/).* On that page, click on ''search.'' On the next page *(http://dms.dot.gov/search/),* type in the five-digit docket number shown at the beginning of this document. The docket number for this document is 12425. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Background

The Title XI Program is a loan guarantee program which was established under Title XI of the Merchant Marine Act, 1936, as amended (the ''Act''). The Secretary of Transportation (Secretary) acting by and through the Maritime Administrator administers the Title XI Program.

Title XI provides for the full faith and credit of the United States for the payment of debt obligations for: (1) U.S. or foreign shipowners for the purpose of financing or refinancing either U.S. flag vessels or eligible export vessels constructed, reconstructed, or reconditioned in U.S. shipyards and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately owned general shipyard facility located in the U.S.

The guaranteed obligations (*i.e.,* notes and bonds) are sold in the private sector. The main purchasers of the obligations include banks, pension funds, life insurance companies, and the general public.

In those instances where the Secretary guarantees obligations under Title XI and where the proceeds of the sale of the obligations are to be used for the construction, reconstruction, or reconditioning of a vessel or for a shipyard improvement, all such proceeds constitute security for the Secretary's risks in extending the guarantees, and are to be under the control of the Secretary as governed by applicable agreements between the Secretary and the Title XI debtor. In addition, the documentation of a Title XI transaction requires the Title XI debtor, under certain circumstances, to make deposits into the Title XI Reserve Fund as additional security for the Secretary.

Prior to the enactment of Section 1109, section 1108 authorized the Secretary to hold only a percentage of obligation proceeds in an escrow account (the ''Escrow Fund'') with the Treasury. The remaining percentage was deposited with a commercial bank in what has become to be known as the ''Construction Fund.'' In addition, the Secretary had no authority under the Act to accept or hold Title XI Reserve Fund deposits. Currently, such deposits, like the Construction Fund, are placed with and held by a commercial bank. The Depository Agreement among the Title XI debtor, the Secretary, and the commercial bank sets forth the terms and conditions under which the funds may be invested, withdrawn, or otherwise paid to the Secretary or the Title XI debtor. The Title XI debtor granted to the Secretary security interests in these accounts and their contents (the ''Collateral''), and provided the Secretary an opinion of counsel on the perfection and first priority of these security interests.

The Uniform Commercial Code (the ''UCC'') of the various states, for the most part, governs the perfection and priority of the Secretary's security interests in the Collateral. At its financial closings, MARAD's experience has been that, given the provisions of the UCC and especially the recent changes to the UCC, even the most knowledgeable of legal counsel have had difficulty drafting clean legal opinions about the perfection and enforceability of MARAD's security interest in the Collateral held by commercial depositories. As a result of these factors, opinions of counsel have, over time, become increasingly time consuming and costly. On the other hand, there has never been any question about the perfection and enforceability of MARAD's security interest in funds held in the Escrow Fund by the Treasury under MARAD's normal security agreements.

In an effort to ameliorate the situation and to streamline the Title XI closing process, the Secretary determined that an alternate means for holding and investing the proceeds of the obligations was necessary. Since the Escrow Fund was already in place, it seemed only logical to use it for not just a percentage of the proceeds, but for all the proceeds. Accordingly, the Secretary sought the enabling legislation, and section 1109 is the result. The Secretary believes this authority will reduce the cost of obtaining Title XI benefits by simplifying the opinions of counsel and eliminating the costs of engaging commercial banks to hold and invest the proceeds. In addition, it is anticipated that closing documentation will be reduced or simplified.

Section 1109 of the Merchant Marine Act, 1936, as amended (codified at 46 App. U.S.C. 1279b) provides:

Section 1279b. Deposit Fund

(a) Establishment of deposit fund. There is established in the Treasury a deposit fund for purposes of this section. The Secretary may, in accordance with an agreement under subsection (b), deposit into and hold in the deposit fund cash belonging to an obligor to serve as collateral for a guarantee under this title made with respect to the obligor.

(b) Agreement.

(1) In general. The Secretary and an obligor shall enter into a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the deposit fund established by subsection (a). (2) Terms. The agreement shall contain such terms and conditions as are required under this section and such additional terms as are considered by the Secretary to be necessary to protect fully the interests of the United States. (3) Security interest of

United States. The agreement shall include terms that grant to the United States a security interest in all amounts deposited into the deposit fund. (c) Investment. The Secretary may invest and reinvest any part of the amounts in the deposit fund established by subsection (a) in obligations of the United States with such maturities as ensure that amounts in the deposit fund will be available as required for purposes of agreements under subsection (b). Cash balances of the deposit fund in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) Withdrawals.

(1) In general. The cash deposited into the deposit fund established by subsection (a) may not be withdrawn without the consent of the Secretary.

(2) Use of income. Subject to paragraph (3), the Secretary may pay any income earned on cash of an obligor deposited into the deposit fund in accordance with the terms of the agreement with the obligor under subsection (b).

(3) Retention against default. The Secretary may retain and offset any or all of the cash of an obligor in the deposit fund, and any income realized thereon, as part of the Secretary's recovery against the obligor in case of a default by the obligor on an obligation.

In accord with the new legislation, the Maritime Administration (MARAD, we, our, or us) proposes to amend our regulations at 46 CFR part 298 to authorize deposit of Reserve Funds, Construction Funds, and Escrow Funds in the U.S. Treasury.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this notice of proposed rulemaking (NPRM) under Executive Order 12866 and have determined that it is not a significant regulatory action under section 3(f). It is also not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Due to the limited economic impact of this NPRM, no further analysis is necessary. These proposals are intended only to authorize deposit of Reserve Funds and Construction Funds in the U.S. Treasury. The intended effect is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs and the modernization and improvement of U.S. general shipyard facilities by improving Title XI program administration.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires MARAD to determine whether this NPRM will have a significant economic impact on a substantial number of small entities. Although a substantial number of Title XI applicants may meet the United States Small Business Administration's criteria for small entity, this NPRM will not have a significant economic impact because it merely proposes to authorize the deposit of Reserve Funds and Construction Funds into the U.S. Treasury. Section 1279b of 46 App. U.S.C. authorizes the deposit of these funds. Currently, obligors deposit these funds in private banks which charge depository fees. This proposal will eliminate depository fees. We do not believe that this NPRM will have a significant economic impact on a substantial number of small entities. We welcome specific comments regarding the economic impact of this proposal.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The proposed regulations will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

We do not believe that the proposed regulations will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Paperwork Reduction Act

This rulemaking contains requirements that have been approved previously by the Office of Management and Budget (Approval No. 2133–0018).

Unfunded Mandates Reform Act

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

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 of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 298

Loan programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 46 CFR part 298 as follows:

PART 298—OBLIGATION GUARANTEES

1. The authority citation for part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1271 *et seq.*; 49 CFR 1.66.

§ 298.2 [Amended]

2. In § 298.2, the definition of Depository is amended by removing all words after ''Depository means'' and adding in their place ''the U.S. Department of Treasury, acting in its capacity under Section 1109 of the Act.''

3. In § 298.21 revise paragraph (f)(2) to read as follows:

§ 298.21 Limits.

* * * * *

(f) * * *

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys with us to be held by the Depository in accordance with the Depository Agreement.

* * * * *

4. In § 298.22 revise paragraph (b)(2) to read as follows:

§ 298.22 Amortization of Obligations.

* * * * *

(b) * * *

(2) You establish a fund with the Depository in which you deposit an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

* * * * *

§ 298.33 [Amended]

5. Section 298.33 is amended as follows:

a. In paragraph (a), by removing the word ''us'' and adding the words ''the Depository'' in its place.

b. By removing paragraph (b)(2)(i) and redesignating paragraphs (b)(2)(ii) through (iv) as paragraphs (b)(2)(i) through (iii).

6. Section 298.35(d) introductory text is revised to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

* * * * *

(d) Deposits. Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial requirements set forth in paragraph (b)(2) of this section, the Company shall make one or more deposits to us to be held by the Depository (the Title XI Reserve Fund), as further provided for in the Depository Agreement. The amount of deposit as to any year, or period less than a full year, where applicable, will be determined as follows:

* * * * *

Dated: June 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–14823 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 060302B]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of scoping meetings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene scoping meetings to receive comments on whether the Council should begin developing an amendment to the Reef Fish Fishery Management Plan to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves. A scoping meeting is part of the initial process of determining whether development of a management action should proceed.

DATES: The scoping meetings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the scoping document are available from the Gulf Council.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The scoping meetings will be convened on the issue of whether the Council should begin developing an amendment to the Reef Fish Fishery Management Plan to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves.

The Madison/Swanson and Steamboat Lumps marine reserves were implemented on June 19, 2000 with a 4–year sunset provision, and will expire on June 16, 2004. The Madison/Swanson site is approximately 115 square nautical miles in size and is located about 40 nautical miles southwest of Apalachicola, FL. Steamboat Lumps is approximately 104 square nautical miles in size and is located about 95 nautical miles west of Tarpon Springs, FL. Within each area, fishing is prohibited for all species except for highly migratory species, i.e., tunas, marlin, oceanic sharks, sailfishes, and swordfish.

These marine reserves were created primarily to protect a portion of the gag spawning aggregations and to protect a portion of the offshore population of male gag. However, the areas are also suitable habitat and may provide protection for many other species, such as scamp, red grouper, warsaw grouper, speckled hind, red snapper, red porgy and others. A 4–year period was established to give the Council time to evaluate the utility of marine reserves. If the Council chooses to continue the Madison/Swanson and Steamboat Lumps marine reserves beyond June 2004, it must do so through a reef fish plan amendment. Non-action will result in the two reserves expiring on June 16, 2004, and the areas re-opening to all fishing.

During the scoping meetings, Dr. Chris Koenig, of Florida State University, who is one of the researchers studying the marine reserves, will give a presentation on his research to date. Public input will then be solicited as to whether management action should be initiated to continue the reserves beyond June 2004, and if so, what the scope of issues should be for consideration.

The scoping meetings will be held at the following locations and dates from 7 p.m.–10 p.m.

1. Wednesday, June 19, 2002, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; 850–234–6541

2. Thursday, June 20, 2002, Tampa Airport Hilton, 2225 Lois Avenue, Tampa, FL 33607; telephone 813–877–6688

Copies of the scoping document for these meetings can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 12, 2002.

Dated: June 6, 2002.

Virginia M. Fay,

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

[FR Doc. 02–14772 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 113
Wednesday, June 12, 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

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension of a currently approved information collection, Information Collection For Document Delivery Services at the National Agricultural Library (NAL), that expires September 30, 2002.

DATES: Comments must be submitted on or before August 16, 2002.

ADDRESSES: Address all comments to Wayne Thompson, Access Services Librarian, Document Delivery Services Branch, National Agricultural Library, Agricultural Research Service, Room 300, 10301 Baltimore Ave., Beltsville, MD 20705–2351. Submit electronic comments to *access@nal.gov.*

FOR FUTHER INFORMATION CONTACT: Wayne Thompson, Access Services Librarian, phone: 301–504–6503, or Fax: 301–504–7593

SUPPLEMENTARY INFORMATION:

Title: Information Collection For Document Delivery Services.

OMB Number: 0518–0027.

Expiration Date of Approval: September 30, 2002.

Type of Request: To extend a currently approved information collection.

Abstract: In its role as both a preeminent agricultural research library and a National Library of the United States, NAL (part of the Department of Agriculture's Agricultural Research Service) provides loans and photocopies of materials from its collections to libraries and other institutions and organizations. NAL follows applicable copyright laws and guidelines and standard interlibrary codes and practices when providing loans and photocopies and charges a fee for this service. To request a loan or photocopy institutions must provide a written request to NAL using either a standard interlibrary loan form, interlibrary loan protocol, or an email message formatted according to NAL provided instructions. Information provided in these requests include the name, address, and telephone number of the party requesting the material, and depending on the method of delivery of the material to the party, may include either a fax number, email address, or Ariel IP address. The requestor must also provide a statement acknowledging copyright compliance, bibliographic information for the material they are requesting, and the maximum dollar amount they are willing to pay for the material. The collected information is used to deliver the material to the requesting party, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the requesting party consents to the fees charged by NAL.

Estimate of Burden: Average 1.75 minutes per response.

Description of Respondents: Respondents to the collection of information are those libraries or other institutions or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent must furnish the information for each loan or copying request.

Estimated Number of Respondents: 2500.

Frequency of Responses: Average 13 per respondent.

Estimated Total Annual Burden on Respondents: 963 hours (0.39 hours per respondent). 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 a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 31, 2002.

Caird E. Rexroad,

Acting Associate Administrator.

[FR Doc. 02–14734 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–047–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request reinstatement of an information collection in support of regulations intended to prevent the introduction of foreign plant pests into the United States.

DATES: We will consider all comments that we receive on or before August 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–047–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–047–1. If you use e-mail, address your comment to

regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–047–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding foreign quarantine notices, contact Ms. Deborah Knott, Permits Branch Chief, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–5055. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Foreign Quarantine Notices.

OMB Number: 0579–0049.

Type of Request: Reinstatement of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the introduction of foreign plant pests into the United States. Implementing this mission often requires us to collect information from a variety of individuals, both within and outside of the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, fruits, vegetables, roots, bulbs, seeds, and other plant products. Our regulations governing the importation of these articles are contained in 7 CFR part 319, ''Foreign Quarantine Notices.''

For example, many plants or plant products may not be imported until the person wishing to import them receives a permit from us. The person wishing to import these items must first fill out a permit application.

We consider the permit application process extremely important, since the information on the application enables us to determine whether the items for import represent a potential pest threat to U.S. agriculture.

Under certain circumstances we also require importers to supply us with other types of information. We require, for example, that containers used to import various plants or plant products be marked in a certain way so that our inspectors can accurately identify them and match them to their accompanying documentation.

We require that certain shipments be accompanied by a phytosanitary inspection certificate, which is a document completed by plant health officials in the originating country.

This certificate attests to the plant pest condition of the shipment at the time it was inspected in the originating country. We use this important information as a guide in determining the intensity of the inspection we must conduct when the shipment arrives in the United States.

This and other information we collect is vital to helping us ensure that imported plants and plant products do not harbor plant pests that, if introduced into the United States, could cause millions of dollars in damage to U.S. agriculture.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.314877 hours per response.

Respondents: Foreign plant health protection authorities.

Estimated annual number of respondents: 92,457.

Estimated annual number of responses per respondent: 3.1305.

Estimated annual number of responses: 289,440.

Estimated total annual burden on respondents: 91,138 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of June, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–14737 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–061–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support the Safeguarding System Definition Project.

DATES: We will consider all comments that we receive on or before August 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–061–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–061–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–061–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue

SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: For information on the Safeguarding System Definition Project, contact Ms. Beth Jones, Assistant Director, LPA, APHIS, 4700 River Road Unit 51, Riverdale, MD 20737–1231; (301) 734–7799. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Safeguarding System Definition Project.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing plant pests and serious communicable animal diseases from entering the United States. To accomplish this mission, APHIS employs a comprehensive safeguarding system that includes elements such as inspections, quarantines, treatments, regulations, surveillance, emergency response, monitoring, trade agreements, and risk assessments.

The public, including international travelers, importers and exporters, members of the transportation and agricultural production industries, and persons with domestic agricultural interests, are key to the effectiveness of our national safeguarding system. Therefore, APHIS informs the public about invasive plant pests and animal diseases of concern and the safeguarding activities we use to protect American agriculture. To improve our communication of these issues and the effectiveness of our national safeguarding system, we are initiating the Safeguarding System Definition Project, which is intended to help us better understand what the public knows about our activities, what they would like to know, and how to best communicate that information. Conducting this project will necessitate the use of information collection activities, including interviews, surveys, and external focus groups.

We are asking the Office of Management and Budget (OMB) to approve the information collection activities for the Safeguarding System Definition Project.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.17857 hours per response.

Respondents: International travelers, importers and exporters, members of the transportation and agricultural production industries, and persons with domestic agricultural interests.

Estimated annual number of respondents: 168.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 168.

Estimated total annual burden on respondents: 198 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of June, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–14738 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on July 15, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting fuels projects, discussing potential demonstration projects, and discussing the longer-term vision for Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: June 5, 2002.

Bud Zangger,

Acting Forest Supervisor.

[FR Doc. 02–14723 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on July 2, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on July 4, 2002 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. Email: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the eighth meeting of the committee. Agenda items include brief presentations of public Title II project proposals, and a ranking of project proposals by the RAC. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: June 5, 2002.

Bud Zangger,

Acting Forest Supervisor.

[FR Doc. 02–14724 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of Change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to revise a currently approved information collection, Field Crops Production.

DATES: Comments on this notice must be received by August 19, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Expiration Date of Approval: 12/31/04.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing State and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Field Crops Production program consists of probability field crops surveys and supplemental panel surveys which capture unique crop characteristics such as the concentration of crops in localized geographical areas. The Program is being revised to discontinue the November and December tobacco forecasts. NASS will no longer forecast tobacco acreage, yield, and production in the November and December Crop Production reports. All types of tobacco are affected in November, whereas only burley tobacco is affected in December. Final production estimates will continue to be published for all types of tobacco in the Annual Crop Production report, released on or about January 10 each year. Annual tobacco revisions will continue to be published in the May Crop Production report.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 536,000.

Estimated Total Annual Burden on Respondents: 150,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: May 28, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–14735 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request an extension for a currently approved information collection, the Egg, Chicken, and Turkey Surveys.

DATES: Comments on this notice must be received by August 16, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to extend an information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock

production, disposition, and prices. The Egg, Chicken, and Turkey Program obtains basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and income estimates for eggs, chickens, and turkeys.

This information is used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the school lunch program and in formulation of export-import policy. The Egg, Chicken, and Turkey Surveys have approval from OMB for a 3-year period. NASS intends to request that the surveys be approved for another 3 years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 6,900.

Estimated Total Annual Burden on Respondents: 5,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: May 28, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–14736 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Public Meeting on Rural Broadband Access

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify telecommunications systems financed by the Rural Utilities Service (RUS), lenders, and other interested persons that RUS is holding a public meeting in order for interested persons to express their views on the challenges of deploying broadband services to rural America, the successes, the role of competition in providing access to rural areas.

DATES: The public meeting will be held on June 27, 2002, starting at 9 a.m. eastern time, with registration at 8 a.m. The public meeting will end at 4:30 p.m. unless concluded earlier.

ADDRESSES: The public meeting will be held in room 0348, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Persons interested in making a presentation at the meeting should send a written request to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, room 4056–S, Stop 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590.

FOR FURTHER INFORAMTION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, room 4056–S, Stop 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1500, Telephone: (202) 720–9554.

SUPPLEMENTARY INFORMATION: The meeting will be conducted by representatives of the Department of Agriculture. The proceedings of the meeting will be transcribed and considered in implementing provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) concerning the Rural Broadband Access loan and loan guarantee program. The purpose of the meeting is to provide background information for consideration in the implementation and administration of its telecommunications broadband loan program. The Agency will retain a summary of the meeting.

RUS is particularly interest in receiving presentations on the following specific issues as they relate to rural broadband access:

1. *The demand for rural broadband access*—What is driving the demand? What is limiting demand? Who are the players and what are their roles—federal, state, and local governments, service providers, equipment manufacturers, private lenders, educational and health care organizations, public safety agencies, etc. What services are in demand, which are not?

2. *The deployment of broadband access*—Where is broadband access available today in rural America—schools, hospitals, law enforcement, businesses, residences? Is there an abundance of dark fiber and if, so, how can that best be used in serving rural America? What technologies are available—which are succeeding, what are their limitations, and at what cost?

3. *The rural landscape*—Who serves rural America? What inhibits rural investment?

4. *Universal service*—Who will protect/finance the carriers of last resort? Will broadband service be a supported service?

5. *Competition*—What role does competition play? Can a rural area support competing broadband providers? What impact will a competitor have on local exchange service?

6. *The benefits*—What are the success stories—to local residents and national interest?

To schedule oral testimony for the public meeting, notify Ms. Purcell, in writing, at the above address. Requests may be sent by facsimile transfer to (202) 702–0810 or e-mail to: *bpucell@rus.usda.gov.* Persons who wish to make oral presentations must restrict presentations to 10 minutes and are also encouraged to have written copies of their complete comments, including exhibits, for inclusion in the official record. Written copies should also be sent to Ms. Purcell in advance of the meeting. Persons who register their attendance at the public meeting, but who have not been scheduled in advance to present oral testimony, will be given an opportunity to do so if time permits. Otherwise, such persons will be allowed the opportunity to submit their views in writing by June 27, 2002, for inclusion in the official record.

Subject to the limitations described in the preceding paragraph, any interested person will be given the opportunity to appear and be heard with respect to matters relevant and material to the subject. However, presiding officials may limit the number of times that any one person may be heard and limit or exclude material that is irrelevant, immaterial, or unduly repetitious. Such action is intended to focus the discussion on the relevant issues, to ensure that all interested persons have an opportunity to participate to the extent time permits, and to prevent undue prolongation of the meeting. Presiding officials may ask questions at the meeting of persons making presentations. The questions and responses will become a part of the official record.

Copies of the transcript of the meeting will not be available for distribution from the Department. However, the transcript of the meeting will be available for public inspection in room 4040 at RUS, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)). Anyone wishing to purchase a copy of the transcript should make arrangements with the court reporter at the meeting.

Dated: June 6, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–14682 Filed 6–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2002]

Foreign-Trade Zone 122—Corpus Christi, TX; Application for Subzone Status, Kiewit Offshore Services, Ltd. (Offshore Drilling Platforms)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the offshore drilling platform manufacturing facility of Kiewit Offshore Services, Ltd., (KOS), in Ingleside, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 3, 2002.

The KOS facility (400 acres, 282,000 sq.ft.) is located along the north shore of Corpus Christi Bay at 2440 Kiewit Road in Ingleside, Texas. The facility is used for the construction, fabrication, and repair of offshore floating and fixed oil drilling platforms and components thereof for domestic and international customers. Foreign components that may be used at the KOS facility (representing up to 95% of material value) include structures of iron or steel, stranded wire, gas turbines, gas compressors, steel mill products, electrical motors, and generators (2002 general duty rate range: free—6.7%, ad valorem).

FTZ procedures would exempt KOS from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company would not be required to pay applicable Customs duties on the foreign components, or it would be able to choose the duty rate that applies to finished offshore drilling platforms (duty free) for the foreign-origin components noted above except for steel mill products. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that full Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is August 12, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 26, 2002).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Customs Service, Suite 570, 555 North Carancahua Street, Corpus Christi, TX 78401.

Dated: June 3, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–14836 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–812]

Postponement of Final Determination of Antidumping Duty Investigation: Certain Cold-Rolled Carbon Steel Flat Products from Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is postponing the final determination in the antidumping duty investigation of certain cold-rolled carbon steel flat products from Spain from July 10, 2002 until no later than September 23, 2002.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin at (202) 482–0656, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Postponement of Final Determination

This investigation was initiated on October 18, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (Oct. 26, 2001) (*Initiation Notice*). The period of investigation is July 1, 2000, through June 30, 2001. On May 9, 2002, the

Department published in the Federal Register the preliminary determination in the antidumping duty investigation of imports of certain cold-rolled carbon steel flat products from Spain. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Spain*, 67 FR 31248 (May 9, 2002).

Pursuant to section 735(a)(2)(A) of the Act, on May 13, 2002, the respondent requested that the Department postpone its final determination until no later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210(e)(2), the respondent consented to the extension of provisional measures to no longer than six months in its request for postponement. In accordance with 19 CFR 351.210(b)(2)(ii), because our preliminary determination is affirmative, because no compelling reasons for denial exist, and because the exporter accounts for a significant proportion of exports of subject merchandise, we are granting the respondent's request and are postponing the final determination until no later than September 23, 2002. Furthermore, any provisional measures imposed by this investigation will be extended from a four-month period to not more than six months.

This notice is issued and published pursuant to section 735(d) of the Act and 19 CFR 351.210(g).

Dated: June 6, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14833 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-840]

Engineered Process Gas Turbo-Compressor Systems from Japan: Final Results of Five-Year ("Sunset") Review and Revocation of Antidumping Duty Order.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and revocation of antidumping duty order on engineered process gas turbo-compressor systems from Japan.

SUMMARY: On May 1, 2002, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on engineered process gas turbo-compressor systems from Japan (67 FR 21632). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this antidumping duty order.

EFFECTIVE DATE: June 16, 2002

FOR FURTHER INFORMATION CONTACT: Amir R. Eftekhari or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-5331 or (202) 482-3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR part 351 (2001).

Background

On June 16, 1997, the Department issued an antidumping duty order on engineered process gas turbo-compressor systems from Japan. Pursuant to section 751(c) of the Act, the Department initiated a sunset review of this order by publishing a notice of the initiation in the **Federal Register**, 67 FR 21632 (May 1, 2002). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review of this order.

Because the Department did not receive a response from any domestic interested party to the sunset review notice of initiation by the applicable deadline, May 16, 2002, the Department notified the International Trade Commission on May 24, 2002, that it intended to issue a final determination revoking this antidumping duty order.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the sunset review, revoking the order or terminating the suspended investigation. Because no domestic interested party filed a response to the notice of initiation, the Department finds that no domestic interested party is participating in this review, and it is revoking this antidumping duty order.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct the Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after June 16, 2002. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: June 6, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14830 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Blanche Ziv, (202) 482–1503 or (202) 482–4207, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

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 (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

Scope of Investigation

The products covered by this investigation are imports of IQF whole or broken red raspberries from Chile, with or without the addition of sugar or syrup, regardless of variety, grade, size or horticulture method (*e.g.*, organic or not), the size of the container in which packed, or the method of packing. The scope of the investigation excludes fresh red raspberries and block frozen red raspberries (*i.e.*, puree, straight pack, juice stock, and juice concentrate).

The merchandise subject to this investigation is classifiable under section 0811.20.2020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Amended Final Determination

On May 15, 2002, the Department determined that individually quick frozen (''IQF'') red raspberries from Chile are being sold in the United States at less than fair value (''LTFV''), as provided in section 735(a) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 35790 (May 21, 2002). On May 28, 2002, we received a ministerial error allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the IQF Red Raspberries Fair Trade Committee and the IQF Committee of the Washington Red Raspberry Commission (''the petitioners'') regarding the Department's final margin calculations. The petitioners requested that we correct the error and publish a notice of amended final determination in the **Federal Register**, pursuant to 19 CFR 351.224(e). The petitioners' submission alleges that the Department failed to correct the margin program for Fruticola Olmue (''Olmue'') pursuant to the Department's findings at verification[1]. Specifically, the petitioners allege that the Department inadvertently applied the incorrect indirect selling expense factor in calculating Olmue's third country indirect selling expense in the margin calculations. Olmue did not submit comments on the ministerial error allegation.

In accordance with section 735(e) of the Act, we have determined that a ministerial error in the calculation of Olmue's indirect selling expenses for U.S. and third country sales was made in our final margin calculations. For a detailed discussion of the above-cited ministerial error allegation and the Department's analysis, *see* Memorandum to Richard W. Moreland, ''Allegation of Ministerial Error; Final Determination in the Antidumping Duty Investigation of IQF Red Raspberries from Chile'' dated May 29, 2002, which is on file in the Central Records Unit (''CRU''), room B–099 of the main Department building.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of IQF red raspberries from Chile to correct this ministerial error. Accordingly, we have revised Olmue's margin. We also revised the ''All Others'' rate. The revised final weighted-average dumping margins are as follows:

Exporter/Manfacturer	Original Weighted-average margin percentage	Revised Weighted-average margin percentage
Comercial Fruticola	0.50	0.50
Exportadora Frucol	0.00	0.00
Fruticola Olmue	5.98	6.33
All Others[2]	5.98	6.33

[2] Pursuant to section 735(c)(5)(A) of the Act, we have excluded from the calculation of the all-others rate margins which are zero or de minimis.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all imports of IQF red raspberries from Chile, except for subject merchandise produced by Exportadora Frucol and Comercial Fruticola (which have zero and *de minimis* weighted-average margins, respectively). Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 6, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14832 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] No ministerial errors allegations were filed with respect to the other two respondents in this case, Comercial Fruticola (''Comfrut'') and Exportadora Frucol (''Frucol'').

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–838]

Notice of Amended Final Determination of Sales at Less-Than-Fair-Value: Structural Steel Beams from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone (202) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Scope of the Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Amendment to Final Determination

In accordance with section 735(a) of the Act, on May 20, 2002, the Department published the final determination in the less-than-fair-value (LTFV) investigation on structural steel beams from Taiwan. *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Taiwan*, 67 FR 35484. On May 24, 2002, respondent Kuei Yi Industrial Co., Ltd. (Kuei Yi) alleged that the Department made a ministerial error in the final margin calculation for that company by failing to convert one type of bank charge to U.S. dollars. For further discussion of this ministerial error, see the memorandum to Louis Apple from the Team, dated June XX, 2002, on file in room B–099 of the main Commerce Department Building. We agree with Kuei Yi. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination in the LTFV investigation on structural steel beams from Taiwan. The revised weighted-average dumping margins are as follows:

Exporter/Manufacturer	Original Final Margin Percentage	Revised Final Margin Percentage
Kuei Yi Industrial Co., Ltd.	15.32	13.11
Tung Ho Steel Enterprise Corp.	5.21	5.21
All Others	12.24	10.70

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the United States Customs Service (''Customs'') to continue suspending liquidation on all imports of the subject merchandise from Taiwan. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds the export price as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This investigation and notice are in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 6, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14831 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–811]

Structural Steel Beams from Spain; Amended Final Determination of Sales at Less than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0629.

SUPPLEMENTARY INFORMATION:

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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Amendment to Final Determination

In accordance with section 735(d) of the Act, on May 20, 2002, the Department published the final determination in the less than fair value investigation on structural steel beams from Spain. *See Notice of Final Determination of Sales at Less Than*

Fair Value: Structural Steel Beams from Spain (67 FR 35482). Also on May 20, 2002, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioners, the Committee for Fair Beam Imports and its individual members, that the Department made a ministerial error in its final determination. We did not receive comments from the respondent in this case, Aceralia Corporacion Siderurgica, S.A. (Aceralia). After analyzing the petitioners' submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculation for Aceralia. Specifically, we find that we erroneously included certain downstream sales information in our analysis for one affiliated reseller to which Aceralia sold structural steel beams at arm's length prices, and we excluded the downstream sales information for another affiliated reseller to which Aceralia did not.

For a detailed discussion of the ministerial error noted above, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated June 4, 2002.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination in the less than fair value investigation on structural steel beams from Spain. The revised weight-averaged dumping margin is as follows: BOXHD≤

Exporter/Manufacturer	Original Final Margin Percentage	Revised Final Margin Percentage
Aceralia Corporacion Siderurgica, S.A.	5.19	5.29
All Others	5.19	5.29

Scope of the Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

This investigation and notice are in accordance with sections 735(d) and 777(i) of the Act.

Dated: June 6, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14835 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–831]

Structural Steel Beams From Italy; Amended Final Determination of Sales at Not Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0629.

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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

Amendment to Final Results

In accordance with section 735(d) of the Act, on May 20, 2002, the Department published the final determination in the less than fair value investigation on structural steel beams from Italy. *See Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy* (67 FR 35481). On May 21, 2002, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from Duferdofin, S.p.A. (Duferdofin), the respondent, that the Department made certain ministerial errors in its final determination. We did not receive comments from the petitioners, the Committee for Fair Beam Imports and its individual members. After analyzing Duferdofin's submission, we have determined, in accordance with 19 CFR 351.224, that certain ministerial errors were made in our final margin calculation for Duferdofin. Specifically, we find that we: (1) Incorrectly applied a domestic inland freight amount related to shipments to a particular warehouse to all sales to the United States, rather than those sales specifically shipped to the warehouse in question; (2) incorrectly revised international freight expenses based on the shipment date; and (3) inappropriately failed to deduct home market commissions from the home market price.

For a detailed discussion of the ministerial errors noted above, as well as the Department's analysis, see the memorandum to Richard W. Moreland from the team, dated June 4, 2002.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination in the less than fair value investigation on structural steel beams

from Italy. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Original Final margin percentage	Amended Final margin percentage
Duferdofin, S.p.A.	0.33	0.01
All Others	0.33	0.01

Scope of the Investigation

The scope of this investigation covers doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These structural steel beams include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes. All the products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this investigation: (1) Structural steel beams greater than 400 pounds per linear foot, (2) structural steel beams that have a web or section height (also known as depth) over 40 inches, and (3) structural steel beams that have additional weldments, connectors, or attachments to I-sections, H-sections, or pilings; however, if the only additional weldment, connector or attachment on the beam is a shipping brace attached to maintain stability during transportation, the beam is not removed from the scope definition by reason of such additional weldment, connector, or attachment.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, and 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

This investigation and notice are in accordance with sections 735(d) and 777(i) of the Act.

Dated: June 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–14837 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On February 6, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from the Republic of Korea (Korea). The review covers twenty-six manufacturers of subject merchandise and the period January 1, 2000, through December 31, 2000. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6320 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On February 6, 2002, the Department published the preliminary results of administrative review of the antidumping duty order on cookware from Korea. *See Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review,* 67 FR 5563 (February 6, 2002) (Preliminary Results). This review covers twenty-six manufacturers of subject merchandise: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. The period of review (POR) is January 1, 2000, through December 31, 2000.

We invited parties to comment on our Preliminary Results of Review. On March 8, 2002, we received case briefs from the Stainless Steel Cookware Committee (the petitioner), Dong Won, and Daelim. On March 15, 2002, we received rebuttal briefs from the petitioner, Daelim and Dong Won.

(The Department has conducted this administrative review in accordance with section 751 of the Act).

Scope of Review

The merchandise subject to this antidumping order is cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

Partial Rescission of Review

In our Preliminary Results, we determined that the following companies made no shipments of subject merchandise to the United States during the POR: Pionex Corporation, Namyang Kitchenflower Co., Ltd., Ssang Yong Ind. Co., Ltd., Poong Kang Ind. Co., Ltd., Sungjin International Inc., Seshin Co., Ltd., O. Bok Stainless Steel Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., and Dong Hwa Stainless Steel Co., Ltd. *See Preliminary Results,* 67 FR at 5564. Because we received no comments from interested parties on our preliminary decision to rescind the review with respect to the above companies, we have determined that no changes to our decision to rescind are warranted for purposes of these final results. Therefore, we are rescinding this review with respect to these manufacturers/exporters.

Facts Available (FA)

In accordance with section 776 of the Act, we have determined that the use of adverse FA is warranted for 14 companies for these final results of review.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the companies referenced below failed to provide the necessary information in the form and manner requested. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

The Department has concluded that, because Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., II Shin Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., East One Co., Ltd., Charming Art Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sae Kwang Alumnium Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., and R.Y. Enterprise, Ltd., failed to respond to the Department's questionnaire, a determination based on total FA is warranted for these companies. For a detailed discussion of this analysis, *see Preliminary Results*, 67 FR at 5565.

2. Section of FA

In selecting from among the facts otherwise available, section 77b(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997). In the *Preliminary Results*, the Department determined that because the 14 manufacturers/exporters listed above, wholly failed to respond to the Department's questionnaire, they did not act to the best of their respective abilities, and therefore an adverse inference is warranted in applying FA for these companies.

For the final results, no interested party comments were submitted regarding this issue and we continue to find that the failure of the 14 manufacturers/exporters listed above to respond to the Department's questionnaire in this review demonstrates that these entities failed to cooperate by not acting to the best of their ability. Thus, consistent with the Department's practice in cases where a respondent fails to respond to the Department's questionnaire, in selecting FA for the 14 manufacturers/exporters listed above, an adverse inference is warranted. For a discussion of the application of an adverse inference in this case, *see Preliminary Results*, 67 FR at 5564–5565.

As adverse FA, we are assigning the highest rate determined for any respondent in any segment of this proceeding. This rate is 31.23 percent. *See Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cookware from Korea,* 51 FR 42873 (November 26, 1986). For a discussion on corroboration of the 31.23 percent FA rate and for a general discussion of the relevance of the selected FA rate for all non-cooperating respondents, *see Preliminary Results,* 67 FR at 5565.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated June 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov.* the paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed, where appropriate, in the relevant sections of the Decision Memorandum.

Daelim

1. We included indirect selling expenses in the calculation of constructed value. *See* Decision Memorandum at comment 1.
2. We rounded all variable cost of manufacturing values to the third decimal point. *See* Decision Memorandum at comment 2.
3. In accordance with section 772(c)(1)(C) of the Act, we added to the U.S. price the amount of countervailing duty imposed on the subject merchandise to offset an export subsidy. *See* Calculation Memorandum for Daelim for the Final Results of the 2000 Administrative Review (June 6, 2002).

Dong Won

1. We recalculated constructed export price profit. *See* Decision Memorandum at comment 4.
2. We have denied Dong Won's duty drawback claim. *See* Decision Memorandum at comment 5.
3. In accordance with section 772(c)(1)(C) of the Act, we added to the U.S. Price the amount of countervailing duty imposed on the subject merchandise to offset an export subsidy. *See* Calculation Memorandum for Dong Won for the Final Results of the 2000 Administrative Review (June 6, 2002).

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period January 1, 2000, through December 31, 2000:

Manufacturer/exporter	Margin (percent)
Dong Won Metal Co., Ltd	1.68
Daelim Trading Co., Ltd	1.26
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Il Shin Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Wonkwang Inc	31.23
Sae Kwang Aluminum Co., Ltd	31.23
Hanil Stanless Steel Ind. Co., Ltd	31.23
East West Trading Korea Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b)(1), we have calculated for Daelim and Dong Won importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for importer-specific sales to the total entered value of the same sales. For the companies for whom we applied FA, we based the assessment rate on the facts available margin percentage. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of this administrative review for all shipments of cookware from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash deposit rate will be 8.10 percent, the ''all-others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 77(I) of the Act.

Dated: June 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration

Appendix—Issues in Decision Memorandum

Comments and Responses:

1. Constructed Value (CV) Calculation for Daelim
2. Difference in Merchandise (DIFMER) Percentages for Daelim
3. Dong Won's Model Matching Program
4. Ministerial Error in Calculation of Dong Won's Constructed Export Price (CEP) Profit

5. Duty Drawback Adjustment for Dong Won
6. Dong Won's Cost of Production (COP)

[FR Doc. 02–14834 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052902B]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by June 26, 2002.

ADDRESSES: Send comments or requests for a copy of the application to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States. NMFS has received an application requesting authorization for a Mexican vessel to receive, within the Pacific waters of the U.S. EEZ south of 38° N. lat., transfers of live tuna from a U.S. purse seiner for the purpose of transporting the tuna alive to the Mexican EEZ.

Section 204(d)(3) of the Magnuson-Stevens Act provides, among other things, that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make this determination.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: June 4, 2002.

Virginia M. Fay,

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

[FR Doc. 02–14773 Filed 6–11–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before July 12, 2002.

FOR FURTHER INFORMATION OR A COPY CONTACT: Lawrence B. Patent, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; FAX: (202) 418–5536; e-mail: *Ipatent@cftc.gov* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for extension of a currently approved information collection.

Abstract: Regulations Governing Bankruptcies of Commodity Brokers, OMB Control No. 3038–0021—Extension.

The information collected pursuant to Part 190 of the Commission's regulations under the Commodity Exchange Act (Act) is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity brokers. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 22, 2002 (67 FR 35966).

Burden statement: The respondent burden for this collection is estimated to average .05 hours per response.

Respondents/Affected Entities: 472.

Estimated number of responses: 7,757.

Estimated total annual burden on respondents: 378.25 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0021 in any correspondence.

Lawrence B. Patent, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 6, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–14703 Filed 6–11–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before July 12, 2002.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION:

Title: Copies of Crop and Market Information Reports (OMB Control No. 3038–0015). This is a request for extension of a currently approved information collection.

Abstract: Copies of Crop and Market Information Reports, OMB Control No. 3038–0015—Extension.

The information collected pursuant to this rule, 17 CFR part 140, is in the public interest and is necessary for market surveillance. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 4a(a), 4i, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 22, 2002 (67 FR 35966).

Burden statement: The respondent burden for this collection is estimated to average .16 hours per response.

Respondents/Affected Entities: 30.

Estimated number of responses: 30.

Estimated total annual burden on respondents: 5 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0015 in any correspondence.

Judith E. Payne, Division of Economic Analysis, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 6, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–14704 Filed 6–11–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Worldwide TRICARE Transitional Health Care Demonstration Project

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a worldwide TRICARE transitional health care demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the Military Health System (MHS) will test whether allowing 60 or 120 days of health care eligibility for dependents of service members who are involuntarily separated from the armed forces is necessary, cost-effective and beneficial to the Department of Defense (DoD). At the end of this Project, DoD will conduct an analysis of the benefits and costs of the program in determining whether transitional health care benefits should continue to be an entitlement for these dependents. Information and experience gained as part of this demonstration project will provide the foundation for longer-term solutions in health care policy development and promulgation. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

EFFECTIVE DATE: This demonstration project applies to all covered health care services provided to dependents of service members who are involuntarily separated from the armed forces on or after January 1, 2002. The DoD will implement the Demonstration upon the announcement of this notice and it will be in effect for 2 years or until rescinded by another authority. In view of the demobilization of over 73,000 reservists and national guardsmen called to active duty in support of deployment to conduct operational missions under Operation Enduring Freedom and Noble Eagle, DoD is waiving the regulation (32 CFR 199.1(o)) requiring at least 30 days notice of a demonstration project prior to its effective date. Waiver of the notice period is deemed necessary to avoid delay in implementing program changes to address obstacles faced by dependents of involuntarily separated service members, reservists and national guardsmen from the onset of the call to active duty.

FOR FURTHER INFORMATION CONTACT: LTC Pradeep G. Gidwani, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, (703) 681–3636.

SUPPLEMENTARY INFORMATION:

A. Background

On December 28, 2001, NDAA 02, Pub. L. 107–107 Subsection 736 (d) eliminated transitional health care eligibility for dependents of service members who are involuntarily separated under honorable conditions or who are separated after being called to or retained on active duty in support of a contingency operation. Section 1145 of Title 10 entitles active duty members departing under such conditions to a period of transitional health care coverage but does not extend coverage for their dependents. Previously, dependents of separated service members supporting contingency operations were entitled up to 30 days of transitional care and dependents of involuntarily separated service members were entitled to 60 days of transitional coverage if the member had been on active duty less than six years or 120 days of transitional coverage if the member had been on active duty for six years or more.

The DoD expects most of these separated service members and their dependents to acquire other health insurance (OHI). Dependents and departing service members could face undue financial hardships during this transition. Accordingly, the Secretary of Defense is authorizing a demonstration project (under Title 10 U.S.C. 1092) for the Department to cover the cost of transitional health care for the dependents of these separated service members effective January 1, 2002.

The Demonstration applies to the dependents of the following members of the armed forces:

A. A member who is involuntarily separated from active duty.

B. A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is for a period of more than 30 days.

C. a member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305, in support of a contingency operation.

D. A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency mission.

The health care available under this Demonstration shall be as follows:

A. An eligible member's dependents who would otherwise be eligible to receive health care in a military treatment facility under 10 U.S.C. 1072(a)(2) if the eligible member was still on active duty will remain eligible for such health care in the same manner from a military treatment facility during the applicable period of eligibility listed below.

B. An eligible member's dependents who would otherwise be eligible to receive health care from civilian facilities or providers under 10 U.S.C. 1079(a) if the eligible member was still on active duty will remain eligible for such health care from civilian facilities or providers under the same rates and conditions during the applicable period of eligibility listed below.

The period of eligibility for dependents under this Demonstration, beginning on the date on which the member is separated, is as follows:

A. For members separated with less than six years of active service, 60 days.

B. For members separated with six or more years of active service, 120 days.

The demonstration project is designed to test an approach for addressing the potential inequity where departing service member health care eligibility is intact but not comparable eligibility for their dependents. The Department's effective response to potential disruption or loss of access to medical care for dependents requires careful review of operational and administrative mechanisms that can ease this hardship during the transition from active duty to civilian status. The demonstration of covering dependents of separating service members is proposed for the purpose of:

A. Assessing the facility for the MHS to provide extended health care coverage for dependents.

B. Determining whether the 60 or 120 days of health care eligibility for dependents is cost-effective, necessary, and beneficial to DoD.

C. Minimizing the uncertainty associated with the transition of separating members to civilian status.

D. Identifying any extraordinary out-of-pocket expenses for dependents.

E. Identifying potential problems associated with the transition process in regards to impaired access, beneficiary satisfaction, and adequacy of providers.

The military departments and Coast Guard will identify beneficiaries eligible for this demonstration program. Eligibility information will be transmitted by the military departments and the Coast Guard to the Defense Manpower Data Center that will establish and maintain beneficiary eligibility data as the Defense Enrollment and Eligibility Record System (DEERS). TRICARE Management Activity (TMA) will notify the managed care support care contractors of this change. DoD's objective is to achieve a level of participation sufficient to test new strategies and will conduct this demonstration worldwide. Demonstration participants will include dependents of separated service members who remain eligible for TRICARE under DoD's transitional health care program. Demonstration participants are eligible for enrollment in TRICARE Prime.

This support is an important element in the welfare of service members and their dependents called to a significant and immediate change in life circumstances. It will prevent undue financial hardships for departing service members and their families during transition from military to civilian life. Information and experience gained as part of this demonstration will provide the foundation for longer-term solutions in the event of future reserve activation or an increase in military forces.

B. Description of Demonstration Project

(1) *Location of Project:* The number of service members routinely separated from active duty coupled with the demobilization of over 73,000 reservists and national guardsmen in support of Enduring Freedom and Noble Eagle will result in the demand for transitional health care services in many geographical areas in CONUS and overseas. Therefore, to achieve a level of participation sufficient to test new strategies, this demonstration will occur nationwide.

(2) *Project Components:* The Demonstration will cover all health care services rendered to eligible beneficiaries beginning January 1, 2002.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–14708 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Advisory Board, Standing Committee of Emerging Chemical and Biological Technology Advisory Committee of Experts Close Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 92–409, notice is hereby given that a closed meeting of the DIA Advisory Board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts was held as follows:

DATES: 5 & 6 June 2002 (0800am–1700pm).

ADDRESSES: Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Mr. Jack A. McNulty, Director, DIA Advisory Board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts, Washington, DC 20340–1328, (202) 231–3507.

SUPPLEMENTARY INFORMATION: The entire meeting was devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the United States Code, and therefore was closed to the public. The Board received briefings on and discussed several current critical intelligence issues and advised the Director, DIA, on related scientific and technical matters.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–14705 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on B–52 Re-Engining will meet in closed session on June 25, 2002, at the Institute for Defense Analysis, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review and advise on key aspects of the policy and technology issues associated with re-engining the USAF B–52 fleet.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review the Department's policy and technology associated with re-engining the B–52 fleet. Re-engining has been undertaken for several

weapons systems in the recent past, to include the KC–135 tanker fleet, and currently, the RC–135 fleet. Given the projected retention of the B–52 for several decades into the future, the Task Force will examine and assess the operational and supportability of B–52 re-engining from the perspectives of: Effective operational weapons system employment, to include tanker demands; efficient ground and flight operations, to include fuel consumption factors; engine reliability and systems performance; technical and supportability risks of remaining with the TF–33 engine for future decades; streamlined support concepts from a best value viewpoint, to include total contractor support options; implementation issues, to include conventional as well as innovative acquisition and financing options; contracting and legal considerations—to include termination issues; and affordability of re-engining as compared to life extension concepts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–14706 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Public Law 95–202 and Department of Defense Directive (DoDD) 1000.20 ''Uniformed Aviation Industry Contract Technical Specialists Assigned to Extended Duty at Ladd Field, AK, To Test Army Air Force Airplanes as Part of the Cold Weather Test Detachment From February 1, 1942, Through February 22, 1944''

Under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: ''Uniformed Aviation Industry Contract Technical Specialists Assigned to Extended Duty at Ladd Field, Alaska, to Test Army Air Force Airplanes as Part of the Cold Weather Test Detachment from February 1, 1942, through February 22, 1944.'' Persons with information or documentation pertinent to the determination of whether the service of this group should be considered active military service to the Armed Forced of the United States are encouraged to submit such information or documentation within 60 days to the DoD Civilian/Military Service Review Board, 1535 Command Drive, EE-Wing, 3rd Floor, Andrews AFB, MD 20762–7002. Copies of documents or other materials submitted cannot be returned.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–14725 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the PBA Study Panel Chairs. The study results also will be briefed to the Chief of Staff of the Air Force (CSAF) during this period. Much of the discussion and work will be carried on at the Top Secret and SCI levels, and the studies will also be discussing substantial amounts of contractor-proprietary information. The meeting will be closed to the public in accordance with Section 552b of Title 5, USC, specifically subparagraphs (c)(1) and (4) thereof.

DATES: 17–28 June 2002.

ADDRESSES: The Arnold and Mabel Beckman Center, Irvine, CA.

FOR FURTHER INFORMATION CONTACT: The Air Force Scientific Advisory Board Secretariat at (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–14726 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The alteration consists of adding a new category of individuals covered, a new category of records, and a new purpose for the information being collected on the Vietnam War Era Service Survey Questionnaire.

DATES: This proposed action will be effective without further notice on July 12, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 14, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0870–5 DAMH

SYSTEM NAME:

Army History Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry ''; and individuals who respond to the Army's Vietnam War Era Service Survey Questionnaire.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry ''Questionnaires and associated historical items received by the U.S. Army Military History Institute under its Veteran Survey Program. Associated historical items may include, but not limited to, audio tapes, books, camp/unit newspapers, diaries, documents, films, memoirs, and artifacts.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with ''10 U.S.C. 3013, Secretary of the Army; Army Regulation 870–5, Military History: Responsibilities, Policies and Procedures; and 16 U.S.C. 470, National Historic Preservation Act.''

PURPOSE(S):

Add a new paragraph ''Vietnam War Era Service Survey Questionnaires will be used to document recollections and opinions of veterans for historical studies of the U.S. Army.''

* * * * *

A0870–5 DAMH

SYSTEM NAME:

Army History Files.

SYSTEM LOCATION:

U.S. Army Center of Military History, Headquarters, Department of the Army, Washington, DC 20310–0200.

Decentralized segments exist at historical offices at Headquarters, Department of the Army and field operating agencies, major commands, and the U.S. Army Military Historical Research Collection, Carlisle Barracks, PA 17013–5000; U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058; U.S. Army Military History Institute, 22 Ashburn Drive, Carlisle, PA 17013–5008. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System; and individuals who respond to the Army's Vietnam War Era Service Survey Questionnaire.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical resumes and personal working files of U.S. Army personnel; personal papers donated by individuals for historical research; photographs of Army personages; requests for historical documents regarding U.S. Army activities and responses thereto; copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s).

Questionnaires and associated historical items received by the U.S. Army Military History Institute under its Veteran Survey Program. Associated historical items may include, but not limited to, audio tapes, books, camp/unit newspapers, diaries, documents, films, memoirs, and artifacts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 870–5, Military History: Responsibilities, Policies and Procedures; and 16 U.S.C. 470, National Historic Preservation Act.

PURPOSE(S):

To provide a record of donations and contributions of historical property to U.S. Army Museums and historical holdings; to enable Army museums and historical holdings to provide upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the Army to establish title to the property.

Vietnam War Era Service Survey Questionnaires will be used to document recollections and opinions of veterans for historical studies of the U.S. Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be disclosed to a municipal corporation, a soldier's monument association, a State museum, an incorporated museum or exhibition operated and maintained for educational purposes only, a post of the Veterans of Foreign Wars or the American Legion, or other Federal museums upon donation or transfer of the historical property to one of those organizations.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, photographs, and on electronic media. Artifacts will be stored in a secure area.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to persons having need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Permanent. Some historical material and photographs are retired to the Washington National Records Center when no longer needed; other such material is transferred to the Military History Research Collection at Carlisle Barracks, PA for preservation. Inquiries about historical events or persons, and responses thereto, are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Assistant Director, Historical and Educational Services Division, U.S. Army Military History Institute, 22 Ashburn Drive, Carlisle Barracks, PA 17013–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Individual should provide their full name, address and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058.

Individual should provide their full name, address and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her Army record, official Army documents, public records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–14709 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 12, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0360 SAPA

SYSTEM NAME:

Media Contact Files (February 22, 1993, 58 FR 10002).

REASON:

The Department of the Army no longer has a requirement to maintain this information; therefore, the system of records is being deleted.

[FR Doc. 02–14710 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent No. 6,018,502: LONG LIFE COAXIAL SPARKER FOR UNDERWATER SOUND SOURCE.//U.S. Patent No. 6,032,567: SURF ZONE MINE CLEARANCE.//U.S. Patent No. 6,037,031: FLOTATION SEAWAY.// U.S. Patent No. 6,039,193: INTEGRATED AND AUTOMATED CONTROL OF A CRANE'S RIDER BLOCK TAGLINE SYSTEM.//U.S. Patent No. 6,039,445: AFOCAL WATER-AIR LENS WITH GREATLY REDUCED LATERAL COLOR ABERRATION.//U.S. Patent No. 6,052,485: FRACTAL FEATURES USED WITH NEAREST NEIGHBOR CLUSTERING FOR IDENTIFYING CLUTTER IN SONAR IMAGES.//U.S. Patent No. 6,058,071: MAGNETO-INDUCTIVE SUBMARINE COMMUNICATIONS SYSTEM AND BUOY.//U.S. Patent No. 6,065,186: FORCE LIMITING TAPERED SHEAR STOP.//U.S. Patent No. 6,065,896: LEVER DEVICE WITH SUPPORT AND LATCH.//U.S. Patent No. 6,082,266: AIR-CUSHION AND ACCURATE MINE LAYING AND MAPPING SYSTEM.// U.S. Patent No. 6,082,675: STANDOFF DELIVERED SONOBUOY.//U.S. Patent No. 6,093,069: LOW WATCH CIRCLE BUOY SYSTEM.//U.S. Patent No. 6,096,085: COMPUTER-READABLE SOFTWARE AND COMPUTER-IMPLEMENTED METHOD FOR PERFORMING AN INTEGRATED SONAR SIMULATION.//U.S. Patent No. 6,097,849: AUTOMATED IMAGE ENHANCEMENT FOR LASER LINE SCAN DATA.//U.S. Patent No. 6,108,457: BACKGROUND EQUALIZATION FOR LASER LINE SCAN DATA.//U.S. Patent No. 6,108,454: LINE CONTRAST DIFFERENCE EFFECT CORRECTION FOR LASER LINE SCAN DATA .//U.S. Patent No. 6,112,668: MAGNETO-INDUCTIVELY CONTROLLED LIMPET.//U.S. Patent No. 6,120,530: PASSIVE THERMAL CAPACITOR FOR COLD WATER DIVING GARMENTS.// U.S. Patent No. 6,130,642: METHOD AND SYSTEM TO IMPROVE GPS NAVIGATION.//U.S. Patent No. 6,145,441: FRANGIBLE PAYLOAD-DISPENSING PROJECTILE.//U.S. Patent No. 6,147,636: SYNTHETIC APERTURE PROCESSING FOR DIFFUSION-EQUATION-BASED TARGET DETECTION.//U.S. Patent No. 6,152,010: WIDE-AREA SLURRY MINE CLEARANCE.//U.S. Patent No. 6,151,882: TURBOFAN ENGINE CONSTRUCTION.//U.S. Patent No. 6,155,190: AIR CUSHION DRY DOCK TRANSPORT SYSTEM.//U.S. Patent No. 6,158,859: WINDOW HAVING ASPHERIC, AFOCAL LENS SYSTEM PROVIDING UNIT MAGNIFICATION BETWEEN AIR AND WATER.//U.S. Patent No. 6,164,229: AIR BEARING PONTOON SYSTEM FOR SHIPPING CONTAINERS.//U.S. Patent No. 6,181,644: DIVER MASK UNDERWATER IMAGING SYSTEM.// U.S. Patent No. 6,182,553: BOAT DEPLOYED EXPLOSIVE NET ASSEMBLY.//U.S. Patent No. 6,205,903: RELIABLE AND EFFECTIVE LINE CHARGE SYSTEM.//U.S. Patent No. 6,216,599: GROUND EFFECT TRANSPORT SYSTEM.//U.S. Patent No. 6,220,168: UNDERWATER INTELLIGENCE GATHERING WEAPON SYSTEM.//U.S. Patent No. 6,222,794: UNDERWATER NOISE GENERATOR ACTUATED BY MAGNETO-INDUCTIVE/ACOUSTIC SIGNALS.// U.S. Patent No. 6,222,928: UNIVERSAL IMPEDANCE MATCHER FOR A MICROPHONE-TO-RADIO CONNECTION.//U.S. Patent No. 6,223,659: LINE STORAGE DEVICE FOR PREVENTING LINE ENTANGLEMENT.//U.S. Patent No. 6,223,674: GENTILE PERFORMANCE WEDGE (GPW) SHOCK MITIGATION PLANNING BOAT HULL.//U.S. Patent No. 6,227,095: INSENSITIVE MUNITION BOOSTER SEAL.//U.S. Patent No. 6,230,629: RAPID IGNITION INFRARED DECOY FOR ANTI-SHIP MISSILE.//U.S. Patent No. 6,233,376: EMBEDDED FIBER OPTIC CIRCUIT BOARDS AND INTEGRATED CIRCUITS.//U.S. Patent No. 6,235,148: CHEMILUMINESCENT PHOTO-CURABLE ADHESIVE CURING AND BONDING SYSTEM.//U.S. Patent No. 6,247,410: HIGH-OUTPUT INSENSITIVE MUNITION DETONATING CORD.//U.S. Patent No. 6,253,450: LINE CHARGE FABRICATION AND PROCEDURES.// U.S. Patent No. 6,253,679: MAGNETO-INDUCTIVE ON-COMMAND FUZE AND FIRING DEVICE.//U.S. Patent No. 6,254,445: INFLATABLE CHEMICAL FOAM INJECTED BUOY.//U.S. Patent

No. 6,255,980: RADAR-ACOUSTIC HYBRID DETECTION SYSTEM FOR RAPID DETECTION AND CLASSIFICATION OF SUBMERGED STATIONARY ARTICLES.//U.S. Patent No. 6,259,653: PORTABLE ENCAPSULATED UNDERWATER ULTRASONIC CLEANER.//U.S. Patent No. 6,264,543: MEAT TENDERIZATION AND STERILIZATION USING AXIAL PLANER SHOCKWAVES.//U.S. Patent No. 6,293,202: PRECISION AIRBORNE DEPLOYED GPS GUIDED STANDOFF TORPEDO.//

ADDRESSES: Requests for copies of the patents cited should be directed to Coastal Systems Station, Dahlgren Division, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: May 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–14714 Filed 6–11–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The Department of the Navy proposes to delete a system of records notice from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion will be effective on July 12, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, DNS10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

These deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report.

Dated: June 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12950–5

SYSTEM NAME:

Navy Civilian Personnel Data System (NCPDS) (February 22, 1993, 58 FR 10827).

Reason: This information is maintained in the Defense Civilian Personnel Data System (DCPDS), which is covered by existing government-wide Privacy Act systems of records notices.

[FR Doc. 02–14711 Filed 6–11–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by July 12, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before August 12, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 5, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Native Hawaiian Education Council.

Abstract: The No Child Left Behind Act of 2001 authorized the Secretary of Education to establish a Native Hawaiian Education Council to help coordinate the educational and related services available to Native Hawaiians. The legislation states that the Education Council may consist of no more than 21 members, unless otherwise determined by a majority of the Council. Furthermore, at least 10 members of the Education Council must be Native

Hawaiian service providers and 10 members must be Native Hawaiians or Native Hawaiian education consumers. In addition, membership must include a representative of the State of Hawaii Office of Hawaiian Affairs.

Additional Information: The Department is requesting OMB approval for this emergency collection, the Native Hawaiian Education Council by July 12, 2002. This request is based upon the statutory requirement that all funds must be allocated by September 30, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden

Responses: 100.

Burden Hours: 200.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2061. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–14720 Filed 6–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 12, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 5, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Impact Aid Discretionary Construction Grant Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 438.

Burden Hours: 1,454.

Abstract: ED will use the information collected through this application to award grants to local educational agencies that receive Impact Aid. The information will also be used to describe to the Congress and the public how these grants are being used.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2047. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–14719 Filed 6–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, July 10, 2002, 9 a.m.–5 p.m.; Thursday, July 11, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel/Hanford House, 802 George Washington Way, Richland, WA (509) 946–7611.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program

Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Wednesday, July 10, 2002

- HAB Exposure Scenario Task Force Workshop Update and Discussion of Workshop Products
- Discussion and Introduction of Draft Advice on the Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement
- Update on Groundwater/Vadose Program
- Discussion and Introduction of Draft Advice on the Plutonium Finishing Plant Tri-Party Agreement (TPA) Draft Change Package
- Discussion and Introduction of FY 2004 Target Budget Draft Advice
- Status on Draft Performance Management Plan for the Accelerated Cleanup of the Hanford Site

Thursday, July 11, 2002

- Adoption of Draft Advice
- Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement
- Plutonium Finishing Plant Tri-Party (TPA) Agreement Draft Change Package
- FY 2004 Target Budget Draft Advice
- Access to Public Information
- Committee and Agency Updates

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on June 6, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–14742 Filed 6–11–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 02–23–NG, et al.]

Michigan Consolidated Gas Company, et al.; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2002, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 6, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1772	5–1–02	Michigan Consolidated Gas Company 02–23–NG.		30 Bcf	Export natural gas to Canada, beginning on May 1, 2002, and extending through April 30, 2004.
1773	5–2–02	Indeck-Oswego Limited Partnership 02–27–NG.	18 Bcf		Import natural gas from Canada, beginning on May 16, 2002, and extending through May 15, 2004.
1774	5–7–02	Indeck-Yerkes Limited Partnership 02–28–NG.	18 Bcf		Import natural gas from Canada, beginning on May 16, 2002, and extending through May 15, 2004.
1775	5–10–02	Energia de Baja California, S. De R.L. de C.V. 02–29–NG.		59,000 Mcf per day.	Export natural gas to Mexico, over a two-year term beginning on the date of first delivery.
1776	5–10–02	West Texas Gas, Inc. 02–32–NG.		50 Bcf	Export natural gas to Mexico, beginning on June 1, 2002, and extending through May 31, 2004.
1777	5–14–02	Coral Energy Resources, L.P. 2–30–NG.	730 Bcf	730 Bcf	Import a combined total of natural gas, including LNG from Canada and Mexico, and export a combined total of natural gas, including LNG to Canada and Mexico, beginning on July 1, 2002, and extending through June 30, 2004.

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1778	5–16–02	Panhandle Eastern Pipe Line Company 02–25–NG.	10 Bcf		Export to reimport natural gas to and from Canada, beginning on December 16, 2001, and extending through December 15, 2003.
1779	5–23–02	Tristar Gas Marketing Company 02–34–NG.	10 Bcf	10 Bcf	Import natural gas from Canada, and import and export a combined total of natural gas from and to Mexico, beginning on April 1, 2002, and extending through March 31, 2004.
1781	5–31–02	National Fuel Resources, Inc. 02–37–NG.	50 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2002, and extending through May 31, 2004.
1782	5–31–02	Emera Offshore Inc. 02–35–NG.	150 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2002, and extending through May 31, 2004.
1783	5–31–02	Emera Energy Inc. 02–36–NG.	150 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2002, and extending through May 31, 2004.
1784	5–31–02	Tractebel LNG North America Service Corporation 02–33–LNG.	100 Bcf	.....	Import liquefied natural gas from various international sources beginning on June 19, 2002, and extending through June 18, 2004.

[FR Doc. 02–14743 Filed 6–11–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7229–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Water Quality Standards Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Water Quality Standards Regulation, EPA ICR No. 0988.08; OMB Control No. 2040–0049; Expiration Date: July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 12, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0988.08 and OMB Control No. 2040–0049, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (mail code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0988.08. For technical questions about the ICR, contact Robert Van Brunt, Office of Water, (202) 566–0379.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for the Water Quality Standards Regulation, OMB Control No. 2040–0049; EPA ICR No. 0988.08; expiring on July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Water Quality Standards (WQS) are provisions of State, Tribal, and Federal law which consist of designated uses for waters of the United States, numeric or narrative water quality criteria to protect the designated uses, and an antidegradation policy to protect existing uses and high quality waters. States are required by Federal law to establish water quality standards. Clean Water Act Section 303(c) requires States and certain Indian Tribes (those Tribes that have received EPA authorization to administer the water quality standards program and have had their water quality standards approved by EPA) to review and, if appropriate, revise their water quality standards regulations once every three years and to submit to EPA the results of the review. EPA then reviews each State and Tribal submission for approval or disapproval.

The WQS Regulation (40 CFR part 131) is the EPA regulation governing the implementation of the water quality standards program. The WQS Regulation describes requirements and procedures for the States and Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. Additionally, the regulation specifies information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the WQS Program. Finally, the WQS Regulation describes a dispute resolution mechanism that will assist in resolving disputes that arise between States and Tribes over water quality standards on common waterbodies.

The ICR now includes provisions of section 101 of the Great Lakes Critical Programs Act (CPA) that amends section 118 of the CWA and directs EPA to publish water quality guidance for the Great Lakes System, codified in 40 CFR part 132. These provisions were formerly EPA ICR No. 1639.04 with OMB control number 2040–0180. The Guidance establishes minimum water quality criteria, implementation procedures, and antidegradation provisions for the Great Lakes System. Information collection requirements that may be necessary to implement State, Tribal, EPA promulgated provisions consistent with the final Guidance include: (1) Bioassays to support the development of water quality criteria (2) antidegradation policy/demonstrations;

and, (3) regulatory relief options (e.g., variances from water quality criteria).

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 5, 2002 (67 FR 5281); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 801 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting. validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local, and Tribal governments and industries, as publically owned treatment works (POTWs).

Estimated Number of Respondents: 56 States and Territories, 20 Tribes, 588 major industrial and POTW dischargers, and 3,207 minor dischargers.

Frequency of Response: Once every three years for water quality standards submittal to EPA; once per Tribal application for the water quality standards program; once per dispute resolution request.

Estimated Total Annual Hour Burden: 238,776 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the address listed above. Please refer to EPA ICR No. 0988.08 and OMB Control No. 2040–0049 in any correspondence.

Dated: June 3, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–14762 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7229–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Metallic Mineral Processing Plants (Subpart LL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Metallic Mineral Processing Plants, OMB Control Number 2060–0016, expiration date July 21, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 12, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0982.07 and OMB Control Number 2060–0016 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Susan Auby, (202) 566–1672. For technical questions about the ICR, contact Gregory Fried at EPA by phone (202) 564–7016, or by email at *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NSPS for Metallic Mineral Processing Plants (Subpart LL), OMB Control Number 2060–0016, EPA ICR Number 0982.07, expiration date July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants were promulgated on February 21, 1984. These standards apply to the following facilities in Metallic Mineral Processing Plants: each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at the mill or concentrator, commencing construction, modification or reconstruction after the date of proposal.

Response to the collection of information is mandatory under 40 CFR part 60, subpart LL. Owners or operators of the affected facilities described must make initial notifications, including notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS), and notification of the initial performance test. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with emission standards, and note the operating conditions, flow rate and pressure drop, under which compliance was achieved. Owners of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system to measure the change in the pressure of the gas stream through the scrubber and the scrubbing liquid flow rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Semiannual excess emissions reports and monitoring systems performance reports will include the exceeded findings of any control device operating parameters, (specified in 40 CFR 60.735, Recordkeeping and Reporting), the date and time of the deviance, the nature and cause of the malfunction (if known) and the corrective measures taken, and identification of the time period during which the CMS was inoperative.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, and retain the file for at least two years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001 (FR); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owner/operators of Metalic Mineral Processing Plants.

Estimated Number of Respondents: 44.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 1,760 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $14,300. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing a respondent burden, including through the use of automated collection techniques to Ms Susan Auby, Collection Strategies Division (Mail Code 2822T), Office of Environmental Information, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Include the EPA ICR number 0982.07 and OMB Control Number 2060–0016 in any correspondence.

Dated: June 3, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–14763 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7230–3]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a conference call meeting of a Panel of the US EPA Science Advisory Board (SAB). The Panel will meet on the date and time noted below. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis. For teleconference meetings, available lines may also be limited. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The Multi-Agency Radiological Laboratory Analytical Protocols (MARLAP) Review Panel of the Radiation Advisory Committee (RAC) of the US EPA Science Advisory Board (SAB) (also referred to as the ''Review Panel,'' or ''Panel'') will meet on Thursday, June 27, 2002 via teleconference from 11 a.m. to 1 p.m. Eastern Standard Time. This public conference call meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. For further information concerning the meeting or how to obtain the phone number, please contact the individuals listed at the end of this FR notice.

Purpose of the Meeting—The purpose of this public conference call meeting is to conduct edits to the draft MARLAP Advisory. This draft will likely not be a public draft at this stage of the process. This public conference call meeting is a follow-up to the public conference call held April 8, 2002 and the public meeting held April 23–25, 2002 in Washington, DC. For information and background on this review, including the two previous public meetings, and the specific the charge to the MARLAP Review Panel, please refer to 67 FR 11328–11330, which was published on March 13, 2002. This public conference call meeting of the Review Panel will provide focus on the edits necessary to prepare a public (i.e., consensus) draft. It is anticipated that shortly after this meeting, a public draft will be prepared and reviewed for closure either July 30, 31 and August 1, or September 24–26, 2002. A separate public notice will be made of whatever meeting date is selected by the Panel during the June 27 conference call discussions.

The need for subsequent meetings of the MARLAP Review Panel will be discussed at this meeting and schedules of any future meetings to complete review of this topic will be discussed. Information concerning any future public meetings will appear in **Federal Register** notices as appropriate. See below for availability of review materials, the charge to the review panel, and contact information.

Please refer to the previous **Federal Register** notice (see above) for availability of review materials and the charge to the review panel.

For Further Information—Any member of the public wishing further information concerning this meeting or who wish to submit brief oral comments must contact Dr. K. Jack Kooyoomjian, Designated Federal Officer, MARLAP, USEPA Science Advisory Board (1400A), Suite 6450, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4557; fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov*. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Kooyoomjian no later than noon Eastern Time five business days prior to the meeting date (June 20, 2002). See below for time limitations on public comments.

Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Ms. Mary Winston, Management Assistant, MARLAP, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4538; fax at (202) 501–0582; or via e-mail at *winston.mary@epa.gov.*

A copy of the draft agenda for the meeting will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science

Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments*: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in *The FY2001 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Kooyoomjian at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 5, 2002.

A. Robert Flaak,

Acting Deputy Staff Director, EPA Science Advisory Board.

[FR Doc. 02–14766 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7230–4]

EPA Science Advisory Board; Request for Comments and Notification of Public Advisory Committee Teleconference Meeting

SUMMARY: The Office of the EPA Science Advisory Board (SAB, the Board) is requesting public comment both on a draft document related to SAB Policies and Procedures for obtaining public input to be used in panel formation and on the need for additional documents on policies and procedures.

Also, pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Policies and Procedures Subcommittee (PPS or the Subcommittee) of the SAB, a chartered Federal advisory committee, is announcing that it will meet in a public teleconference on July 8, 2002 from 10 a.m. to 12 p.m. Eastern Time. The meeting will be hosted out of Conference Room 6013, US EPA, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis. For further information concerning the meeting or how to obtain the phone number, please contact the individual listed below.

Request for Comment—The Office of the EPA Science Advisory Board Staff is requesting comment on a short booklet, entitled *Overview of the SAB Panel Formation Process* (this is Appendix A to the report found at: *http://www.epa.gov/sab/ecm02003.pdf)*

The booklet describes a new four-stage process that developed so that the SAB may benefit from public input on panel formation and so the process of recruiting and selecting panel members is clearer to the public. The intended audience includes SAB Members and Consultants, the public, and EPA staff. The SAB Staff invites public comment on: (1) Whether the document describes the new processes clearly so that the public can understand and participate in the process; and (2) other ways to strengthen the Board's operations, including panel formation.

The SAB Staff may develop booklets describing its policies and procedures for project selection panel deliberations; report writing; the roles of the Executive Committee, SAB Standing Committees, and panels; the role of the SAB Staff; and communication. The SAB Staff invites public comment on whether booklets describing policies and procedures for these areas, or other areas, are of interest to members of the public.

Please send any public comments to Dr. Angela Nugent of the EPA Science Advisory Board staff by June 21, 2002. Comments are preferred via email. Please see contact information below.

Notification of Teleconference and Purpose of the Teleconference—At the planned teleconference, the PPS will discuss their plans to develop advice for the SAB Staff on the development of new guidance for policies and procedures for the Board.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the Teleconference meeting must contact Dr. Angela Nugent, Designated Federal Officer, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4562; fax at (202) 501–0323; or via e-mail at *nugent.angela@epa.gov.*

Members of the public desiring additional information about the meeting location or the call-in number, must contact Ms. Betty Fortune, Management Assistant, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0323; or via e-mail at *fortune.betty@epa.gov.*

A copy of the draft agenda will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 12 days before the meeting.

Oral Comments—The SAB will have a brief period (no more than 15 minutes) available during the Teleconference meeting for applicable public comment. Members of the public who wish to make a brief oral presentation must contact Dr. Nugent in writing (by letter, fax, or e-mail—see previously stated information) no later than 12 noon Eastern Time, June 28, in order to be included on the Agenda. The oral public comment period will be limited to 15 minutes divided among the speakers who register. Registration is on a first come basis, allowing approximately three to five minutes per speaker or organization. Speakers who are unable to register in time, may provide their comments in writing.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public

statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, for conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at face-to-face meetings.

Written Comments: Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat (*.PDF), WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in the *EPA Science Advisory Board FY2001 Annual Staff Report—Expanding Expertise and Experience* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 5, 2002.

Robert Flaak,

Acting Deputy Staff Director, EPA Science Advisory Board.

[FR Doc. 02–14767 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0071; FRL–7176–3]

Terrestrial Field Dissipation Workshop; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA and Canada's Pesticide Management Regulatory Agency (PMRA) will hold a 3–day workshop to discuss a proposed harmonized pesticide guideline for terrestrial field dissipation studies beginning on July 23, 2002, and ending on July 25, 2002. This notice announces the location and times for the workshop and sets forth the tentative agenda topics.

DATES: The workshop meetings will be held on Tuesday, July 23, 2002, and Wednesday, July 24, 2002, from 9 a.m. to 5 p.m., and Thursday, July 25, 2002, 9 a.m. to noon. The meetings on July 23 and July 25 2002, are open to the public. The meeting on July 24, 2002, is an internal meeting.

ADDRESSES: The workshop will be held at the Double Tree Hotel, Crystal City, 300 Army Navy Drive, Arlington, VA 22202. Space is limited.

FOR FURTHER INFORMATION CONTACT: Mark Corbin, Environmental Fate and Effects Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 605–0033; fax number: (703) 305–6309; e-mail address: corbin.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to pesticide registrants and to all others who are involved in pesticide matters. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document on the Home Page, select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**''—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. For additional information on the goals, purpose, and agenda for the terrestrial field dissipation workshop, refer to the following Web site: http://esc.syrres.com/fdw/.

2. *In person.* The Agency has established an administrative record for this workshop under docket control number OPP–2002–0071. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the workshop. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any 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. Goals/Purpose/Agenda

The goals of the workshop include the following:

1. Resolve Science Advisory Panel issues and industry (Crop Life America/Crop Life Canada) comments on the 1998 draft harmonized guidelines/protocol.

2. Involve industry, government, academic, and other interested parties in providing feedback on and obtaining resolution of the remaining issues pertaining to the revised guidelines/protocol.

3. Finalize the harmonized guidelines/protocol.

List of Subjects

Environmental protection.

Dated: June 6, 2002.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 02–14771 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002-0006; FRL–6833–2]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products LPE E94T and LPE–94 10% Aqueous containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 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/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002-0006. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the applications after considering all required data on risks associated with the proposed use of lysophosphatidylethanolamine (LPE), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of LPE when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

EPA issued a notice, published in the **Federal Register** of September 19, 2001 (66 FR 48256) (FRL–6791–1), which announced that J P BioRegulators, Inc., Suite 125, 3230 Deming Way, Middleton, WI 53562 (now called Nutra-Park Inc., 8383 Greenway Blvd., Suite 520, Middleton, WI 53562, had submitted applications to register the pesticide products LPE E94T (EPA File Symbol 70515–E) and LPE–94 20% Aqueous (EPA File Symbol 70515–R) containing 94% and 20% lysophosphatidylethanolamine, respectively. The registrant subsequently submitted a lower concentration formulation with 10% LPE and 90% other ingredients for 70515–R. These products were not previously registered.

The applications listed below were approved on March 26, 2002 for these growth regulator products containing 94% and 10% LPE and 6% and 90% other ingredients respectively:

1. LPE E94T (EPA Registration Number 70515–2) for manufacturing use only product.

2. LPE–94 10% Aqueous (EPA Registration Number 70515–1) for enhancing product ripening in the field and increasing shelf life of fruits, flowers and vegetables, an end-use product from the above manufacturing use only product.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 21, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–14493 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0095; FRL–7181–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number 2002–0095, must be received on or before July 12, 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.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number 2002–0095 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS 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'' 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 ID number 2002–0095. 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 physical located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you indentify docket ID number 2002–0095 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 ProtectionAgency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number 2002–0095. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR–4)

0E6185

EPA has received a pesticide petition (0E6185) from the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing time-limited tolerances for residues of the herbicide, diflufenzopyr, 2-(1-(3,5-difluorophenylamino) carbonyl)hydrazono) ethyl(-3-pyridinecarboxylic acid, its metabolites convertible to 8-methylpyrido(2,3-d]pyridazin-5(6H)-1, and free and acid-released 8-hydroxymethylpyrido(2,3-d) pyridazine-2,5(1H,6H)-dione, expressed as diflufenzopyr in or on the raw agricultural commodities of cattle, goat, hog, horse, and sheep meat at 0.60 parts per million (ppm); cattle, goat, hog, horse, and sheep kidney at 4.0 ppm; cattle, goat, hog, horse, and sheep meat by-products (except kidney) at 0.50 ppm; cattle, goat, hog, horse, and sheep fat at 0.30 ppm; and milk at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC, 27709.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue of diflufenzopyr is adequately understood.

2. *Analytical method.* BASF Corporation has provided suitable independently validated analytical methods for detecting and measuring levels of diflufenzopyr and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels described in these and the existing tolerances. Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression.

3. *Magnitude of residues.* Data from metabolism studies in goat and poultry have established that the expected dietary burden from crops treated with diflufenzopr will not result in quantifiable residues above the limits of the standard analytical method.

B. Toxicological Profile

The nature of the toxic effects caused by diflufenzopyr is discussed in Unit II.B. of the **Federal Register** of December 12, 2001 (66 FR 64257) (FRL–6812–7).

C. Aggregate Exposure

The aggregate exposure (food, drinking water, and residential) assessment for diflufenzopyr is discussed in Unit II.C. of the **Federal Register** of December 12, 2001 (67 FR 64257).

D. Cumulative Effects

The potential for cumulative effects for diflufenzopyr and other substances with a common mechanism of toxicity is discussed in Unit II.D. of the **Federal Register** of December 12, 2001 (66 FR 64257).

E. Safety Determination

The safety determination for the U.S. population, infants, and children for diflufenzopyr is discussed in Unit II.E. of the **Federal Register** of December 12, 2001 (66 FR 64257).

F. International Tolerances

There is no CODEX or Mexican residue limits established for diflufenzopyr or its metabolites.

[FR Doc. 02–14490 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0101; FRL–7182–3]

Tebufenozide; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Vermont Department of Agriculture, Food, and Markets and the Maine Department of Agriculture, Food, and Rural Resources to use the pesticide tebufenozide (CAS No. 112410–23–8) to treat up to 25,000 acres of pasture and haylands in Vermont and 100,000 acres of pasture and haylands in Maine to control

armyworms. The Applicants propose a use which has been requested in 3 or more previous years, and a petition for a tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket ID number OPP–2002–0101, must be received on or before June 27, 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 ID number OPP–2002–0101 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
State government	9241	State agencies that petition EPA for section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in this unit. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0101. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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 ID number OPP–2002–0101 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.

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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.

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 ID 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. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Vermont Department of Agriculture, Food, and Markets and the Maine Department of Agriculture, Food, and Rural Resources has requested the Administrator to issue a specific exemption for the use of tebufenozide on pasture and haylands to control armyworms. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Vermont Department of Agriculture, Food, and Markets asserts that in 2001 unusually cooler temperatures and in localized regions of the state wet conditions triggered tremendous numbers of pests including armyworms and particularly fall armyworms. The concern is that there will be a recurrence of the conditions in 2002 leading to more potential crop loss. The economic threshold action level for pastures and haylands is three or more small armyworms per square foot. An armyworm outbreak in Vermont is of vital concern to farmers and livestock owners. Armyworm infestations have reduced the production in pasture and hay crops by an estimated 50% to 90%. According to Vermont Department of Agriculture, Food, and Markets there is no currently registered product that is effective in controlling armyworms.

The Maine Department of Agriculture, Food, and Rural Resources asserts that in 2001 economic losses due to armyworms occurred in all areas of Maine. In some locations armyworm infestations reduced the production in improved pastures as well as grasslands by 50% to 100%. The mild winter and recent wet conditions this spring are conducive to another outbreak of armyworms. Like Vermont, the Maine Department of Agriculture, Food, and Rural Resources also states that currently registered alternatives are not effective in controlling armyworms.

Efficacy data as well as actual field use (under previous emergency exemptions) indicate that tebufenozide will provide excellent armyworm control.

Both applicants propose to make no more than two applications per acre per year of a formulated product containing 23% tebufenozide. Up to 0.125 lb active ingredient (ai) per acre (8 fluid ounces of formulated product) will be applied. A total of 0.25 lb ai per acre (16 fluid ounces of formulated product) may be applied. A maximum of 25,000 acres of pasture and haylands in Vermont and 100,000 acres of pasture and haylands in Maine will be treated.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested in 3 or more previous years, and a petition for a tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Vermont Department of Agriculture, Food, and Markets and the Maine Department of Agriculture, Food, and Rural Resources. In the past the Agency has issued emergency exemptions for this use in Alabama, Arkansas, Connecticut, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, and Vermont to control armyworms in pasture. It is likely these other states may also apply for emergency exemptions in 2002 for use season.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 31, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–14494 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7230–7]

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at the Hanford site proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II–A2–40, Docket A–98–49) are available for review in the public dockets listed in **ADDRESSES.** EPA will conduct an inspection of waste characterization systems and processes at Hanford to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of June 24, 2002.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before July 12, 2002.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Mail Code 6102, Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday 1 pm–5 pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts

comments sent electronically or by fax (fax: 202–260–4400; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–7734. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our website at *http://www.epa/gov/radiation/wipp*.

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Public Law 102–579), as amended (Public Law 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of Hanford's technical program for waste characterization in accordance with Condition 3 of the WIPP certification. We will reevaluate the following EPA-approved radioassay equipments: (1) Segmented Gamma Scanning Assay System at the Plutonium Finishing Plant used for characterizing repackaged debris; and (2) Gamma Energy Assay (GEA) System Unit A at the Waste Receiving and Processing (WRAP) facility used for characterizing retrievably-stored CH-debris waste. We will also inspect a new equipment, GEA System Unit B at the WRAP facility that DOE has proposed for use in characterizing retrievably-stored debris waste. The inspection is scheduled to take place the week of June 24, 2002.

EPA has placed three DOE-provided documents pertinent to the inspection in the public docket described in **ADDRESSES.** These include: (1) Hanford Site Transuranic Waste Certification Plan, HNF2600, Rev. 6, May 2002, (2) Hanford Site Transuranic Waste Characterization Quality Assurance Project Plan, HNF 2599, Rev. 6, May 2002, and (3)Waste Receiving and Processing Facility, Gamma Energy Processing Operations (WRP1-OP–0906, H–2), May 2002. Also, we have placed an EPA-developed document that summarizes EPA's past waste characterization (WC) inspections at Hanford and the technical processes that EPA has approved to date. The documents are included in item II-A2–40 in Docket A–98–49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes and programs at Hanford adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from Hanford to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed. Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: June 6, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–14994 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0097; FRL–7181–4]

Difenzoquat and Diquat Dibromide Tolerance Reassessment Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice of tolerance reassessment for difenzoquat and diquat dibromide starts the 30–day public comment period during which the public is invited to submit comments on the Agency's ''Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for Difenzoquat'' and ''Report of the FQPA, TRED for Diquat Dibromide.'' The Agency is providing an opportunity, through this notice, for interested parties to comment on the Agency's tolerance reassessment decisions in accordance with procedures described in Unit I. of this document. All comments will be carefully considered by the Agency. If any comment causes the Agency to revise its decision on tolerance reassessment for difenzoquat and/or diquat dibromide, the Agency will publish notice of its amendment in the **Federal Register**.

DATES: The tolerance reassessment decision document for difenzoquat is available under docket ID number OPP–2002–0097; the decision document for diquat dibromide is available under docket ID number OPP–2002–0098. Comments must be received on or before July 12, 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. under **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0097 for difenzoquat and OPP–2002–0098 for diquat dibromide,

in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For difenzoquat*: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8050; e-mail address: *spears.tawanda@epa.gov*.

For diquat dibromide: Tyler Lane, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–2737; e-mail address: *lane.tyler@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

To access TRED documents electronically, go directly to the TREDs table on the EPA Office of Pesticide Programs' Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0097 for difenzoquat and OPP–2002–0098 for diquat dibromide. 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, includes printed and 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 the EPA, it is imperative that you identify docket ID number OPP–2002–0097 for difenzoquat and OPP–2002–0098 for diquat dibromide in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 a.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 characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0097 for difenzoquat and OPP–2002–0098 for diquat dibromide. 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 appropriate 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 burdens 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 ID 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. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the difenzoquat and

diquat dibromide TREDs. These decisions have been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made that aggregate risks are not of concern. A reregistration eligibility decision (RED) was completed for difenzoquat in September 1994, and diquat dibromide in July 1995, prior to FQPA enactment, and therefore needed an updated assessment to consider the provisions of the Act.

FFDCA requires that the Agency, when considering whether to establish, modify, or revoke a tolerance, consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' At this time, difenzoquat and diquat dibromide have not been identified as sharing a common mechanism of toxicity and are not scheduled for a cumulative risk assessment. Additionally, the tolerances for difenzoquat (22) and diquat dibromide (44) are now considered reassessed as safe under section 408(q) of FFDCA.

All registrants of pesticide products containing one or more of the active ingredients listed in this document have been sent the appropriate TRED documents, and must respond to labeling requirements within 8 months of receipt. In addition, the Agency requests a response to the generic Data-Call-In (DCI) letter from technical registrants within 90 days of receipt.

The reregistration program is being conducted under Congressionally-mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, the Agency is issuing these TREDs as final documents because no risk mitigation or changes to existing labeling are necessary. All comments received within 30 days of publication of this **Federal Register** notice will be carefully considered by the Agency. If any comment significantly impacts a TRED, the Agency will amend its decision by publishing a **Federal Register** notice.

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

The legal authority for these TREDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(a) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides.

Dated: May 31, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–14371 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7230–2]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment—Rockaway Township Wellfield Superfund Site.

SUMMARY: The United States Environmental Protection Agency (''EPA'') proposes entering into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''). EPA is publishing this notification to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve the liability of Alliant Techsystems Inc. for certain future response costs to be incurred by EPA at the Rockaway Township Wellfield Superfund Site (''the Site'') in Rockaway and Denville Townships, New Jersey.

DATES: Comments must be provided on or before July 12, 2002.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, New York, New York 10007, and should refer to: In the Matter of the Rockaway Township Wellfield Superfund Site: Administrative Settlement, U.S. EPA Index No. 02–2002–2010.

FOR FURTHER INFORMATION CONTACT: United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, New York, New York 10007; Attention: Virginia A. Curry, Esq. (212) 637–3134 or *curry.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 122(h) of CERCLA, notification is hereby given of a proposed administrative settlement with Alliant Techsystems Inc. by which this company will pay all EPA future costs at the Site that are not remedial design/remedial action oversight costs. Alliant will remediate the contaminated soil and groundwater at the Denville Technical Park portion of the Site under a separate agreement with the State of New Jersey. Alliant previously paid all EPA's past costs other than costs incurred in EPA's oversight of the remedial design/remedial action costs. This Site is within the jurisdiction of the Third Circuit which has ruled that parties are not liable under CERCLA for remedial design/remedial action oversight costs. Alliant will receive a covenant not to sue for all EPA's past costs and all paid future costs. The Attorney General has approved this settlement.

Dated: May 24, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–14765 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7230–1]

Velsicol/Hardeman County Landfill Superfund Site Mathis Brothers/South Marble Top Road Landfill Superfund Site Shaver's Farm Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C.

9622(i), notice is hereby given of a proposed administrative ability-to-pay settlement with Velsicol Chemical Corporation for recovery of past and future response costs concerning six superfund sites: The Velsicol/Hardeman County Landfill Superfund Site, Toone, Hardeman County, Tennessee; the Mathis Brothers/South Marble Top Road Landfill Superfund Site, Kensington, Walker County, Georgia; the Valley Chemical Superfund Site, Greenville, Mississippi; the Tennessee Products Superfund Site, Chattanooga, Tennessee; the Former Coke Production Plant Property, Chattanooga, Tennessee; and the Shaver's Farm Superfund Site, Lafayette, Walker County, Georgia. The Agreement requires Velsicol Chemical Corporation to pay up to approximately $3.5 million dollars, plus interest, to resolve its outstanding and potential liabilities at the six Sites. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: May 17, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–14764 Filed 6–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, June 13, 2002

June 6, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 13, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Media	*Title:* Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act—Sunset of Exclusive Contract Prohibition (CS Docket No. 01–290). *Summary:* The Commission will consider a Report and Order concerning the possible sunset of Section 628(c)(2)(D).
2	Media	*Title:* Revisions to Cable Television Rate Regulations; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulations (MM Docket Nos. 92–266 and 93–215); Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service (CS Docket No. 94–28); and Cable Pricing Flexibility (CS Docket No. 96–157). *Summary:* The Commission will consider a Notice of Proposed Rulemaking and Order concerning cable television rate regulations.
3	Media	*Title:* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. *Summary:* The Commission will consider a Notice of Inquiry seeking information and comment for the Ninth Annual Report to Congress on the status of competition in the market for the delivery of video programming.
4	Wireless Telecommunications	*Title:* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993—Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. *Summary:* The Commission will consider a Seventh Report concerning the status of competition with respect to Commercial Mobile Services.
5	Wireless Telecommunications and Office of Engineering and Technology.	*Title:* Service Rules for Use of the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands; and Loea Communications Corporation Petition for Rulemaking (RM–10288). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning service rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz.
6	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6). *Summary:* The Commission will consider an Order modifying section 54.507(a) of its rules as it pertains to unused funding.
7	Wireline Competition and Office of Engineering and Technology.	*Title:* Telecommunications Service Priority Program Report. *Summary:* The Commission's Wireline Competition Bureau and Office of Engineering & Technology and the National Communications System will report on the Telecommunications Service Priority program and related outreach efforts.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's

Internet audio broadcast page at <*http://www.fcc.gov/realaudio/*>. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–1470, Ext. 10; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14910 Filed 6–10–02; 11:49 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 200233–012.

Title: Packer Avenue Lease and Operating Agreement.

Parties: Philadelphia Regional Port Authority, Astro Holdings, Inc.

Synopsis: The proposed amendment extends the agreement through June 19, 2002.

Agreement No.: 011808.

Title: HJS/Sinolines Slot Allocation & Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd., Sinotrans Container Lines Co., Ltd.

Synopsis: The agreement would authorize the parties to share vessel space in the trade between ports in the Peoples' Republic of China (including Hong Kong), Taiwan, Korea, and Japan and ports on the U.S. Pacific Coast.

Dated: June 7, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–14783 Filed 6–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 14568N.
Name: Districargo, Inc.
Address: 8015 NW 29th Street, Miami, FL 33122.
Date Revoked: May 1, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2827N.
Name: Raymond Express Corporation dba Raymond Express International.
Address: 320 Harbor Way, South San Francisco, CA 94080.
Date Revoked: May 9, 2002.
Reason: Surrendered license voluntarily.

License Number: 17258NF.
Name: Skycel, Inc. dba Econcargo.
Address: 8211 NW 68th Street, Miami, FL 33166.
Date Revoked: May 12, 2002.
Reason: Failed to maintain valid bonds.

License Number: 15097F.
Name: United Globe Cargo, Inc.
Address: 2142 NW 99th Avenue, Miami, FL 33172.
Date Revoked: May 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16033NF.
Name: Wice Freight Services (Los Angeles), Inc.
Address: 701 West Manchester Blvd., Suite 102, Inglewood, CA 90301.
Date Revoked: May 30, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–14782 Filed 6–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Kerry Freight (USA) Inc., 147–45 Farmers Blvd., Suite 201, Jamaica, NY 11434. Officers: Kevin J. Park, Corporate Secretary (Qualifying Individual), Lui Kim Ming, Director.

Citic Global Logistics, Inc., 120 W. Huntington Drive, Suite 101, Arcadia, CA 91007. Officers: David Fernandes, Secretary (Qualifying Individual), John Woo, President.

World Cargo Transport Inc. dba Global Freight Transport, Inc., 17 Jessica Lane, No. Brunswick, NJ 08902. Officer: William Roach, President (Qualifying Individual).

O K Container Sales, Inc., 17870 Castleton Street, #238, City of Industry, CA 91748. Officers: Boe-Bong Chou (aka Ben Chou), Managing Director, (Qualifying Individual), Szu-Pien Kao, President.

Profes INTL Corporation dba All State International Freight Co. dba Cargo Alliance Service, 167–55 148th Avenue, Jamaica, NY 11434. Officers: Charles H. Choi, Director, (Qualifying Individual), Yeau Myung Yoon, President.

T W International Inc. dba DYNA Express, 147–35 Farmers Blvd., Suite 202, Jamaica, NY 11434. Officers: Ai-Yun (Agnes) Tang, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Interocean Logistics, Inc., 703 Waterford Way (NW 62nd Ave.), Suite 650, Miami, FL 33126. Officers: Carlos X. Valdano, President, (Qualifying Individual), Juan Carlos Valdano, Secretary/Treasurer/Dir.

Johnny Air Cargo, Inc., 69–04 Roosevelt Avenue, Woodside, NY 11377. Officer: Jay Naval Angeles, Vice President (Qualifying Individual).

Go-Trans (Los Angeles) Ltd., 20140 S. Western Avenue, Torrance, CA 90501. Officers: Clemencia Tizon Hilvano, Vice President (Qualifying Individual), Patrick Siu, President.

C D S Overseas, Inc., 440 South Hindry Avenue, Suite A, Inglewood, CA 90301. Officer: Joseph K. Yau, President/CEO (Qualifying Individual).

American Freight Forwarders, Inc., 10431 Felson Street, Bellflower, CA 90706. Officers: Kari Anne Stupke, Secretary (Qualifying Individual), Eric Alan Larson, President/CEO.

Advantage Logistics & Trading Services Inc., 13703 SW 100 Terrace, Miami, FL 33186. Officers: Sigfrido Eduardo Caamano, President (Qualifying Individual).

Cosmic Logistics Inc., 181 S. Franklin Avenue, Valley Stream, NY 11581. Officers: Milton Heid, President (Qualifying Individual), Ausustus Antico, Secretary/Treasurer.

Nationwide Relocation Services Inc., 1700 NW 64th Street, Suite 400, Ft. Lauderdale, FL 33309. Officers: Aldo L. Disorbo, Director (Qualifying Individual), Katherine Bach, President.

Standard Logistics, LLC, 8616 La Tijera Blvd., #403, Los Angeles, CA 90045. Officers: Walter Rozario, Manager (Qualifying Individual), Tom Allen, Manager.

Stat Logistics International, Inc., 28310 Industrial Blvd., Suite C, Hayward, CA 94545. Officers: Michael J. Ford, Asst. Vice President (Qualifying Individual), Patrick H. Crenshaw, President/CEO.

Dated: June 7, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–14784 Filed 6–11–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
16650F	McCollister's Transportation Systems, Inc., 1800 Route 130 North, Burlington, NJ 08016	March 28, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–14781 Filed 6–11–02; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Household Goods Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of final issuance of the GSA Household Goods Tender of Service.

SUMMARY: The General Services Administration (GSA), in compliance with 41 U.S.C. 418b, has finalized the GSA Household Goods Tender of Service (HTOS) which may be accessed as described in the Supplementary Information of this notice. The HTOS combines the Domestic Tender of Service (DTOS), effective January 2, 1996, and the International Tender of Service (ITOS), effective October 1, 1995, into a single document. It establishes a uniform basis for purchasing transportation, accessorial services, and storage-in-transit for personal effects, unaccompanied baggage, and privately owned vehicles of Federal civilian employees relocated in the interest of the Government.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Ju, Transportation Programs Branch, by phone at 703–305–7060 or by e-mail at *lynnette.ju@gsa.gov.*

SUPPLEMENTARY INFORMATION: Agreement to abide by the provisions of the HTOS is a prerequisite for any carrier or household goods forwarder that wishes to participate in GSA's Centralized Household Goods Traffic Management Program (CHAMP). GSA's Federal customer agencies benefit from the HTOS which leverages the Government's buying power to provide agencies standardized, cost effective household goods transportation services.

The HTOS was published in the **Federal Register** for comment on December 21, 2001 (66 FR 246). Comments, due by February 19, 2002, were received from the American Moving and Storage Association (AMSA), and Steven's Van Lines. GSA considered all comments received in finalizing the document for publication, incorporated changes where appropriate, and reconciled with the commenting organizations those comments that were not adopted with one exception. One commenting organization pointed out the need to correct numerous ''Government Bill of Lading (GBL)'' references since the GBL was retired on March 31, 2002. GSA must carefully evaluate each reference—a time consuming process. Some references are appropriate since the GBL still may be used for international shipments. GSA will continue its evaluation and issue a subsequent HTOS amendment to correct any references that are inappropriate. The reissued HTOS effectively cancels the current DTOS and ITOS and all their supplements. The final HTOS is available through the Internet at the following site: *http://www.r6.gsa.gov/fss/fsstt/hhg/tos.htm.* If you are unable to access this information, please notify the point of contact listed above.

Dated: June 6, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

[FR Doc. 02–14718 Filed 6–11–02; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Cooperative Agreement With the Association of American Medical Colleges To Support Research Integrity Within Academic Societies

AGENCY: Department of Health and Human Services (DHHS). Office of the Secretary, Office of Public Health and Science, Office of Research Integrity.

ACTION: Notice.

SUMMARY: The Office of Research Integrity (ORI), Office of Public Health and Science, DHHS, announces its plan to support a single source cooperative agreement with the Association of American Medical Colleges (AAMC). The purposes of this cooperative agreement is to engage the help of AAMC in encouraging academic societies to take measures to promote research integrity activities within their organizations.

Authority: This Cooperative Agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

FOR FURTHER INFORMATION CONTACT: Director, Division of Education and Integrity, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852. (301) 443–5300.

SUPPLEMENTARY INFORMATION: Academic societies play a crucial role in defining and promoting standards for the responsible conduct of research.

However, it has also been suggested that academic societies could be more active in filling this role. To this end, ORI plans to provide a single source cooperative agreement with the AAMC. The purpose of this cooperative agreement is to provide financial resources to the AAMC so that they will award grants to the targeted academic societies to undertake activities aimed at promoting the responsible conduct of research.

The total award to AAMC will amount to approximately $275,000, of which $25,000 will be used for administrative expenses. The remaining $250,000 will be for proposed grants awards, subdivided into two categories. The first category will fund approximately 10 small grants of $5,000 each to support single events or limited activities such as a special meeting, a national conference, or a publication. The second category will fund approximately eight larger grants of $25,000 each. These grants will be used for major program initiatives aimed at promoting the responsible conduct of research.

As part of the May 2000 reorganization of the Office of Research Integrity, the Division of Education and Integrity, ORI, was directed to ''develop and implement, in consultation with the Public Health Service agencies, activities and programs for PHS intramural and extramural research to teach the responsible conduct of research, promote research integrity, [and] prevent research misconduct.'' The House Appropriation Committee Report for FY 2002 further urged that ORI form ''a strong partnership [with] the extramural research community in both the development and implementation of ORI's policies and procedures.'' AAMC is ideally and uniquely suited to assist ORI in forming partnerships with the extramural community that will foster the responsible conduct of research, promote research integrity, and thereby prevent research misconduct.

Founded in 1876, AAMC is a leading association organized for the purpose of improving the nation's health through the advancement of medical schools, teaching hospitals, and academic societies. It is comprised of 125 accredited U.S. medical schools, 400 major teaching hospitals and health systems, and 98 academic and professional societies representing over 100,000 members, including the nation's medical students and residents. AAMC has been instrumental in providing a continuing forum for the discussion and exchange of information not only within its membership but also among academic researchers more broadly, from the clinical sciences to basic research. No other academic organization has such a diverse membership and at the same time is so directly associated with the research programs sponsored by DHHS.

AAMC is uniquely qualified to assist ORI in reaching out to academic societies. The AAMC has demonstrated over the years that it can work successfully with the scientific community, which includes academic societies, by (1) providing information through educational conferences, seminars, and publications and (2) advocating with key congressional members and government agencies. Over the years, AAMC has also shown its ability to partner with other organizations, including government entities, such as Centers for Disease Control and Prevention. AAMC is comprised of five components. One of its components is the Council of Academic Societies (CAS). Therefore, it is because of this organizational relationship that the AAMC has a unique capacity to work directly with key academic societies that intersect with the PHS constituent community in a number of distinct ways, *e.g.,* education, research, administration, health care delivery, and policy functions. Contact with key constituent communities will be organized through AAMC's Council of Academic Societies (CAS), one of five constituent components. ORI is confident, based on these important and unique characteristics, that AAMC is the only organization that can effectively bridge the gap between the relevant academic societies and the need to promote research integrity in fields that are directly relevant to the work of PHS.

The ORI will assume substantial programmatic involvement in this project. It will work cooperatively with AAMC in establishing specific goals for this program and participate in the peer review of the grants. It will also assist in announcing of the project and the grant results.

(OMB Catalog of Federal Domestic Assistance: The Catalog of Federal Domestic Assistance number for this Cooperative Agreement is CFDA #93.004)

Dated: June 6, 2002.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–14739 Filed 6–11–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

DATE AND TIME: June 21, 2002, from 8 a.m. to 12:45 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION, CONTACT: Lisa Oliphant, Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established in 1956 by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. The Council has undergone two name changes and several reorganizations before arriving at its present status as a program office within the Office of Public Health and Science in the United States Department of Health and Human Services. It currently operates under directives issued in Executive Order 13265, as amended. PCPFS serves to promote physical activity and sports participation among all Americans. The primary functions of the Council include (1) to advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommend to the President and Secretary, as necessary, actions to accelerate progress; (2) to advise the Secretary on ways and means of enhancing opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national,

state and local levels; and (4) advise the Secretary regarding the enhancement of objectives, programs and educational and promotional materials sponsored, overseen, and/or disseminated by the Council.

This meeting of the Council is being held to (1) introduce newly appointed members; (2) provide Council members with the status of ongoing Council programs and activities; and (3) plan for future projects and programs.

The 15-day notice exception found at 41 CFR 101–61015(b)(2) is invoked due to the President signing this Executive Order on June 6, limiting the amount of time available for public notice of the Council meeting, and the necessity of a meeting within 15 days of that date.

Dated: June 5, 2002.

Lisa E. Oliphant,

Executive Director.

[FR Doc. 02–14740 Filed 6–11–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: June 26, 2002—9 a.m.–6 p.m.; June 27, 2002—10 a.m.–2 p.m.

Place: The Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the full Committee will be briefed by HHS staff on a number of topics including an update on activities of the HHS Data Council; Departmental responses to recent reports and recommendations from the Committee; and the status of implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) including the status of privacy and data standards regulations. The Committee will hear a presentation on the Consolidated Health Informatics E-government Initiative and from a panel on recent activities in the healthcare quality area. The Committee will also vote on approval for its 5th annual report to Congress on the implementation of HIPAA administrative simplification provisions, the adoption of a plan for Heath Statistics in the 21st Century, and draft recommendations for code sets. There will be Subcommittee breakout sessions late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions may be found on the NCVHS Web site (URL below).

On the second day the full Committee will hear from the General Accounting Office on a study on linking records and privacy. Later in the day members will hear reports from the Subcommittees and Workgroups on their activities. Finally, the agendas for future NCVHS meetings will be discussed.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: May 4, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–14702 Filed 6–11–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–09]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under the Performance Outcome Measures Project it will hold two competitions to fund grant awards for cooperative agreements to support:

(1) State-wide surveys of program performance with State Agencies on Aging, and (2) the continued development of performance outcome measures survey instruments. Under the first competition, for State-wide surveys, AoA expects to enter into cooperative agreements at a federal share of approximately $50,000 for one year with up to fifteen (15) State agencies on aging. Under the second competition, for the development of performance outcome measures survey instruments, AoA expects to enter into cooperative agreements at a federal share of approximately $30,000 for one year with up to ten (10) State Agencies on Aging.

Purpose of grant awards: It is the purpose of the first part of this competition to provide states with the opportunity to conduct performance outcome measures surveys at the state level. AoA is conducting national performance outcome surveys which the States can use as performance benchmarks for comparison with the State-wide surveys they elect to conduct. Under the second part of this competition for the performance outcome measures project states must work collaboratively to continue to refine the current survey measures and develop new measures in additional areas.

Eligibility for grant awards and other requirements: For both competitions under this Announcement eligibility is limited to State Agencies on Aging. Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is July 29, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, 330 Independence Ave., SW, Washington, DC 20201, Attn: David Bunoski, or by calling 202/260–0669. Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants.*

Dated: May 24, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–14701 Filed 6–11–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02165]

Population-based Research in Attention-Deficit Hyperactivity Disorder; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for cooperative agreements for population-based research projects on Attention-Deficit Hyperactivity Disorder (ADHD) that describe prevalence, treated prevalence, select comorbid conditions, secondary conditions, and health risk behaviors.

The purpose of this program is to support research in ADHD and the exploration of other health conditions and health risk behaviors to children and adolescents with the disorder.

This program consists of two types of research (Type I and Type II):

Type I—Research Targeting Children With ADHD Ages 4 to 10

The purpose of Type I funding is to determine the prevalence or treated prevalence of children with ADHD in a defined community; to identify rates of select comorbid or secondary conditions in children with ADHD in a defined community; to identify types and rates of health risk behaviors in children with ADHD; and to describe current and previous receipt of treatment in children with ADHD. Type I awardees will work in collaboration with other grantees and CDC to develop adequate measures and inform methodologic decisions. Wherever possible, Type I grantees will use identical case identification methods as in Type II projects.

Type II—Research Targeting Adolescents With ADHD Ages 11 to 17

Similar to Type I, the purpose of Type II funding is to describe the prevalence or treated prevalence of ADHD in adolescents in a defined community; to identify rates of comorbidity and secondary conditions in adolescents with ADHD in the defined community; to identify rates of health risk behaviors in adolescents with ADHD; and to describe current and previous receipt of treatment in adolescents with ADHD. Type II awards will work in collaboration with CDC to develop adequate measures and inform analytic decisions. Wherever possible, Type II grantees will use identical case identification methods as in Type I projects.

Quantifiable outcomes of the cooperative agreement will be measured against the following performance goal: To find causes and risk factors for birth defects and developmental disabilities in order to develop prevention strategies.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 311 and 317(C) of the Public Health Service Act, (42 U.S.C. Sections 241, 243, and 247b–4) as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organization, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Only one application from each organization may be submitted for this announcement. The applicant can apply for only one Type (Type I or Type II).

To be eligible for Type I or Type II awards, applicants must document a population of at least 5,000 youths either aged 4 to 10 or aged 11 to 17 from which screening for ADHD will be conducted. The minimum study population was determined to ensure a robust study sample and is based on ADHD prevalence estimates of 5 to 7 percent of school-age children. Applicants who are unable to document the minimum study population requirement will be determined ineligible. The applicant must include this information as part of the abstract. If it is not included, then the application will be determined as non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $500,000 is available in FY 2002 to fund approximately two awards. It is expected that the awards will average $250,000. It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress, submission of required reports, and the availability of funds.

Funding Preferences

Funding preference will include: (1) Geographic balance; and (2) racial/ethnic diversity of target populations, relative to and consistent with the technical merit of the application.

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purposes of this program announcement under both types of award, the recipient will be responsible for activities under 1. Recipient Activities, and CDC will be responsible for activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop or enhance a population-based (in the community or area defined by the applicant) epidemiologic survey to identify prevalence or treated prevalence rates of ADHD in children (Type I) or adolescents (Type II). The recipient will clearly describe a population-based method for the study.

b. Identify methodology for ascertaining an ADHD case. Method should reflect the current diagnostic criteria for ADHD as seen in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM–IV), American Psychiatric Association, 1994.

c. Identify select comorbid conditions to be included in the survey. Applicants will focus on the presence of common conditions often comorbid with ADHD. These may include but are not limited to the following: Oppositional-defiant disorder; depression; learning disorders; anxiety; and conduct disorder. Comorbid conditions may be investigated based on the interest and capabilities of the applicant organization.

d. Identify specific health risk behaviors to be included in the survey. For Type I studies, health risk behaviors among 4 to 10 year old children will be assessed. These may include but are not limited to the following examples: Unintentional injury, fighting/bullying; drug or alcohol use; smoking; truancy; delinquency; and early sexual activity. For Type II studies, health risk behaviors among 11 to 17 year old youth will be assessed. These may include but are not limited to the following examples: Unintentional injury due to automobile collisions; bicycle or sports related injuries; fighting/bullying; drug use; alcohol use; smoking; sexual activity; teen-age pregnancy or paternity; self-injurious behaviors; truancy; and criminality.

e. Develop a survey module to collect other descriptive and demographic data on the study participants including current and previous treatment for ADHD and comorbid cases. Emergency medical care utilization should also be assessed for the reason and frequency of care.

f. Develop valid and reliable survey data collection instruments and protocols.

g. Establish or enhance collaborative relationships with appropriate stakeholders, i.e. schools, school districts, local officials, professionals, or local organizations.

h. Develop and implement quality assurance procedures to ensure that study protocols are followed and that data is not compromised.

i. Develop research questions or survey modules in areas related to, but distinct from those already specified in the announcement. Recipient initiated research questions and methods will be clearly described.

j. Collaborate with other grantees to design and develop a common protocol for all recipients to implement and evaluate.

2. CDC Activities

a. Participate in designing, developing, and evaluating methodologies and approaches for using standardized case definitions for the grantees. Provide final approval of case identification and study methods.

b. Participate in the development and planning of the survey instrument and study protocol. Provide final approval of survey instrument.

c. Provide current information on survey methods including technical information on ADHD, selected comorbid conditions, and health risk behaviors.

d. Assist the recipient in the development of quality assurance procedures.

e. Participate in the development of an evaluation plan for the completeness and validity of data from the survey.

f. Assist in the analysis and reporting of aggregate survey data collected from grantees, and coordinate the transfer of data among grantees.

g. Facilitate communication/coordination among recipients to enhance collaborative activities, to improve the overall quality of the research, and ensure data quality.

h. Assist recipients in the evaluation and dissemination of the findings.

F. Content

Letter of Intent

A non-binding letter of intent is requested from prospective applicants. The letter should not exceed two pages. It should identify the announcement number, name the proposed project director, denote the intent to submit a Type I or Type II application (applicants are only permitted to submit a proposal for one type of award), and indicate the funding level being requested. This letter will allow CDC to determine the amount of interest in the announcement, to plan the review more efficiently, and to ensure that each applicant receives timely and relevant information prior to the application submission date.

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

G. Submission and Deadline

Letter of Intent (LOI)

On or before June 28, 2002, submit the LOI to the Official Designated for Program Technical Assistance identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of Form PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

On or before 5 p.m. Eastern Time, August 2, 2002, submit the application to: Technical Information Management-PA02165 Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disaster, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal as stated in section ''A. Purpose'' of this announcement. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Applications will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Description of Program and Methodology (30 Points)

a. Extent to which applicant describes the methods they will use to: (1) Identify and clearly define the population for the proposed research, including the size of the community, demographic characteristics of the study area, and methods for screening or administering the survey in this population; (2) develop case definitions for ADHD, the selected comorbid conditions, and measures of health risk behaviors using valid and reliable measurement tools; (3) train study staff on case ascertainment methods and survey delivery as appropriate; (4) develop and implement quality assurance procedures and an evaluation plan for the study; and (5) develop an analytic and dissemination plan, and prepare manuscripts.

b. Extent to which applicant describes proposed investigator-initiated survey questions or modules, including specific questions or types of questions, existing scales or inventories, and why these additions are relevant and important to the intent of this announcement.

2. Collaborative Efforts (20 Points)

a. Extent to which applicant demonstrates the ability to access multiple data sources as necessary for the proposed study. For instance, school systems, local officials, parent groups, or others for the purpose of case ascertainment (include written assurances).

b. Extent to which recipient identifies possible collaborative relationships with existing ADHD research programs that may enhance recipients' future research activities.

c. Extent to which collaborative efforts with other relevant stakeholders are documented.

3. Goals and Objectives (15 Points)

a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project.

b. Extent to which applicant's goals and objectives are realistic, time-bounded, and consistent with the stated goals and purpose of this announcement and the proposed program methodology.

c. The degree to which applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to why and in what ways the design of the study is adequate to establish the rates and descriptive data required by the recipient.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with the community(ies) and recognition of mutual benefits.

4. Staffing and Management (15 Points)

a. Extent to which key personnel have qualifications, skills and experience in epidemiologic methods, ADHD specific surveys or similar large population-based surveys, data management and analysis to develop and implement population-based surveys and analytic studies in ADHD and other related disorders.

b. Extent to which applicant has the ability to manage and coordinate the proposed research.

c. Extent to which there is appropriate dedicated staff time to develop and implement the project.

d. Extent to which applicant provides an appropriate time line and includes activities and personnel responsibilities.

e. Extent to which applicant demonstrates an organizational structure (include an organizational chart) and facilities/space/ equipment that are adequate to carry out the activities of the program.

5. Understanding the Problem (10 Points)

a. Extent to which applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement.

b. Extent to which applicant understands the issues, challenges, and barriers associated with developing and implementing population-based surveys on ADHD and the complexity of epidemiologic study in ADHD and related disorders.

c. Extent to which applicant understands the issues, challenges, and barriers associated with case ascertainment for ADHD.

d. Extent to which applicant describes the need for population-based study of ADHD and related disorders in their community or State.

6. Evaluation Plan (10 Points)

a. Extent to which applicant describes an evaluation plan that will monitor the reliability, progress, timeliness, and completeness of the objectives and activities of the project.

b. Extent to which applicant describes a method to evaluate the completeness of ascertainment of cases for the survey aspects of the study.

7. Budget Justification (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of the facilities and equipment necessary to carry out this project.

8. Human Subjects Review (Not Scored)

The extent to which the applicant adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-Annual progress reports to include:

a. A brief project description.

b. A comparison of the actual accomplishments to the goals and objectives established for the period.

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity from the project.

d. Other pertinent information, including preliminary findings from the analysis of available data.

e. Financial recap of obligated dollars to date as a percentage of total available funds.

f. A data requirement that demonstrates measures of effectiveness as related to the performance goal stated in section ''A. Purpose'' of this announcement.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on Funding, then go to Grants and Cooperative Agreements.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Assistance and Acquisition Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Program Announcement 02165, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: 770–488–2723, E-Mail address: *SLH3@CDC.GOV.*

For program technical assistance, contact: William K. Ramsey, Project Officer, National Center on Birth Defects and Developmental Disabilities, CDC, 4770 Buford Highway, MS F–15, Atlanta, Georgia 30341, Telephone: 770–488–7282, E-Mail address: *WKR1@CDC.GOV.*

Dated: June 6, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–14728 Filed 6–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02108]

The Recurrence of Neural Tube Defects Affected Pregnancies Educational and Prevention Program Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the support of a prevention recurrence program for neural tube defects (NTDs). This program addresses the ''Healthy People 2010'' focus area of Birth Defects and Developmental Disabilities.

The purpose of the program is to prevent the recurrence of pregnancies affected by NTDs by increasing maternal preconceptional and periconceptional use of folic acid supplementation through a program targeting women who have had at least one such pregnancy. This program will improve the knowledge and awareness of health care providers, and women of reproductive age about reducing birth defects by promoting the use of folic acid.

Quantitative and measurable outcomes of the program will be in alignment with the performance goal to increase consumption of folic acid among women of reproductive age to prevent serious birth defects.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 311, and 317(C) of the Public Health Service Act, (42 U.S.C. Sections 241, 243 and 247b–4), as amended. The Catalog of Federal Domestic Assistance number is 93.184.

C. Eligible Applicants

Assistance will be provided only to applicants that are well-established national, nonprofit organizations with experience in the development of health education strategies targeting women that are at risk of having a NTD-affected pregnancy and educating health care providers about the relationship between folic acid and NTDs, specifically spina bifida.

To be eligible, applicants must:

1. Demonstrate that the organization's mission is explicitly committed to the prevention of NTDs specifically spina bifida, and this may be demonstrated by submission of the charter, articles of incorporation, or other governing documents.

2. Demonstrate that the organization is a nonprofit and recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code, and this may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate the organization has the capacity and experience providing health education to women who are at risk of having a NTD-affected pregnancy, and this may be demonstrated through letters of support.

4. Demonstrate that the organization has a national membership of a national network of local organizations, and this may be done through a letter from the organization's leadership which describes the national network.

This information should be placed directly behind the face page (first page) of your application. Applications that do not include the above information will be determined as non responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''1. Recipient Activities,'' and CDC will be responsible for the activities listed under ''2. CDC Activities.''

1. Recipient Activities:

a. Develop a public awareness campaign for women who are at risk for recurrence of a NTD-affected pregnancy.

b. Identify women who have had a NTD-affected pregnancy in order to target educational and prevention messages and strategies.

c. Develop and test messages for brochures, posters and other materials to physician and health care providers on the recurrence of NTDs.

d. Educate women who have had a NTD-affected pregnancy and provide them with accurate, sensitive, and timely information on the causes of NTDs and the possibility of preventing future such problems through increased folic acid supplementation.

e. Evaluate the effectiveness of education and supplementation by assessing reported knowledge, consumption and subsequent pregnancy outcomes of the target audience.

f. Develop training of health care providers (HCP) designed to increase the number of women counseled about consuming adequate levels of folic acid.

g. Develop and implement a plan to evaluate the efficacy and effectiveness of this project.

h. Access target populations of: families affected by NTDs (e.g., those living with spina bifida); women of reproductive age who have spina bifida; and women who have experienced miscarriage, therapeutic terminations, or stillbirth due to NTD-affected pregnancies, in order to test messages for efficacy and sensitivity.

i. Develop and disseminate health promotion prevention information through innovative health communication and social marketing techniques related to the prevention of recurrence of NTDs.

2. CDC Activities:

a. Provide technical and scientific consultation and assistance for the development and implementation aspect of this project.

b. Provide technical and scientific consultation in evaluating the indicators of changes in knowledge, attitude and behaviors of women who are at risk for recurrence of NTDs.

c. Participate in the development and evaluation of national surveys of women at risk for a recurrence related pregnancy.

d. Participate in the development of educational materials and information for health care providers to increase their knowledge about folic acid consumption for women who are at risk for recurrence of NTDs.

F. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before 5 p.m. Eastern Time July 10, 2002, submit the application to: Technical Information Management Section, PA 02108, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications will be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disaster, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline. Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal as stated in section ''A. Purpose'' of this announcement. Measures must be objective/quantitative and must measure the intended outcome. The Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of Objectives (30 Points)

The extent that the proposed objectives are clearly stated, realistic, time-phased, and related to the purpose of the project

2. Scope of Proposal (30 points)

Ability of the organization to carry out project activities on a national scope, including data collection and educational intervention in at least two-thirds of States located in the United States

3. Evaluation (15 Points)

The quality and feasibility of the evaluation plan for the various initiatives involved in the project

4. Project Personnel (15 Points)

The extent that professional personnel proposed to be involved in this project are qualified, including experience and evidence of past achievements appropriate to this project

5. Understanding of the Problem (10 Points)

The extent that the applicant understands the requirements, problems and complexities of the project and the adequacy of the operation plans to carry out the various initiatives involved in the project

6. Budget (Not Scored)

The applicant must provide justification for budget expenditures as well as appropriateness to activities proposed in the application. The budget will be evaluated for the extent that it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

7. Semi-annual reports should include:

a. A brief project description.

b. A comparison of the actual accomplishments to the goals and objectives established for the period.

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity from the project.

d. Other pertinent information, including preliminary findings from the analysis of available data.

e. Financial recap of obligated monies to date as a percentage of total awarded funds.

f. Measures of effectiveness.

8. Financial status report, no more than 90 days after the end of the budget period.

9. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review

AR–8 Public Health System Reporting Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–15 Proof of Nonprofit Status

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Assistance & Acquisition Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement 02108, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number 770–488–2723, Email address *slh3@cdc.gov.*

For program technical assistance, contact: Annie Latimer, Public Health Advisor, Division of Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Hwy, NE., Room 1411, Chamblee, GA 30341–4146, Telephone number 770–488–7123, Email address *aml1@cdc.gov.*

Dated: June 6, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–14727 Filed 6–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02104]

Cooperative Agreement to Support State Assessment Initiatives Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to improve the ability of states to assess progress toward achieving national, state, and community health objectives; to conduct health assessment through partnerships; and to use assessment information for policy development and program management. This program addresses the ''Healthy People 2010'' focus area of Public Health Infrastructure.

The purpose of the program is to improve the ability of states to monitor progress toward achieving measurable national, state, and community health objectives; use assessment information for public health policy development and assurance; and monitor progress toward addressing health disparities among various population subgroups.

The focus of this initiative is to produce a general knowledge related to effective assessment methods and practices that can be disseminated to and used by other states. This will be accomplished through the formation of working partnerships between state public health departments and other public and private partner organizations and groups. These groups may include, but are not limited to, state Medicaid agencies, managed care organizations, county/city health departments, philanthropic organizations, universities, hospital associations, clinical provider organizations/networks, community-based organizations, and Indian tribes.

This announcement consists of two parts:

Part A.—Building new assessment capability

Part B.—Evaluating and institutionalizing existing assessment capability and disseminating model assessment methods, systems, and approaches to other states.

Applicants may apply under either Part A or Part B to develop or improve assessment capability in one of three focus areas. These focus areas are:

1. Data Access or Linkage

Work with identified partner organization(s)/agency(s) to gain access to and analyze new data sets, or link existing data sets in new ways to increase the usefulness of the data. Data sets selected must be of primary interest to both the state health department and the partner organization(s) and integral to the mission of both. Data sets selected should also be available to most states (e.g., Behavioral Risk Factor Surveillance System (BRFSS), vital statistics, etc.) so that methods developed by award recipients can be disseminated and adopted by other states.

2. Data Dissemination Systems

Implement new systems or improve existing systems for dissemination of public health data (e.g., electronic/web-based data dissemination systems) and evaluate the impact of these systems on identified partners and users. Activities involving electronic data dissemination systems should be done in accordance with technical standards and specifications for interoperability outlined in the National Electronic Disease Surveillance System (NEDSS) guidance found at: *http://www.cdc.gov/nedss,* or the CDC Information Technology Functions and Specifications found at: *http://www.cdc.gov/cic/functions-specs.*

3. Community Health Assessment Practices

Develop, implement, and evaluate tools, strategies, and approaches to improve the capability of local public health agencies and communities to conduct meaningful community health assessments, and demonstrate how the resulting data have been used to affect public health programs or policy.

Background information on the Assessment Initiative, the role of assessment in public health, and examples of projects under each of the three focus areas described above, can be found in Attachment III of this program announcement. Attachment(s) can be found on CDC Web site at: *http://www.cdc.gov/od/pgo.funding/grantmain.htm.*

The Assessment Initiative provides a unique opportunity for applicants to integrate the activities/objectives of various programs and projects to achieve common goals related to improving state and local assessment capability. Attachment IV of this program announcement provides examples of other projects with potential for this type of integration.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office:

1. Maximize the distribution and use of scientific information and prevention messages through modern communication technology.
2. Encourage state health departments to develop efficient and comprehensive public health information and surveillance systems by promoting the use of the Internet and by focusing on development of standards for communication and data elements.
3. Efficiently respond to the needs of our public health partners through the provision of epidemiologic assistance.
4. Implement accessible training programs to provide an effective work force for staffing state and local health departments.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 311(b), and 317 of the Public Health Service Act, [42 U.S.C. section 241(a), 243(b), and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their bona fide agents, specifically, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau; and federally recognized Indian tribal governments.

States/territories/tribes are invited to apply under either Part A or Part B of this announcement, but not both. No more than one application per state, territory, or tribe should be submitted.

To be eligible to apply under Part B, applicants must provide evidence that they have accomplished all of the following prior to submitting their application:

1. Successfully collaborated with one or more partner groups or organizations in their state/territory/tribe to develop an innovative system or method to improve one of the following:
   a. Data access/linkage.
   b. Data dissemination.
   c. Community health assessment practices.
2. Implemented the system/method, resulting in a positive impact on public health programs or policy.
3. Obtained evidence of interest in the system/method by other state(s)/territory(s)/tribe(s)(i.e., letter confirming interest in adopting and using the system or method).

Applicants under Part B must also be able to describe how the system/method they have developed to improve assessment capability is generalized to other states.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $1,500,000 is available in FY 2002 to fund approximately seven to nine awards. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12 month budget period within a project period of up to five years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and the availability of funds.

Part A.—Building new assessment capability. Approximately $500,000 is available to fund approximately three to four awards under Part A. It is expected that the average award will be $140,000, ranging from $125,000 to $175,000.

Part B.—Evaluating and institutionalizing existing assessment capability and disseminating model assessment methods, systems, and approaches to other states.

Approximately $1,000,000 is available to fund approximately four to five awards under Part B. It is expected that the average award will be $225,000, ranging from $200,000 to $275,000.

Matching funds is not a requirement for this program announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Part A.—Building new assessment capability

Year One

a. Form an advisory committee that will meet a minimum of quarterly to provide guidance and direction for the project. Include representatives from each of the partner groups/organizations, as well as representatives from other key programs or divisions within the state/territorial/tribal health department whose participation is integral to the success of the project.

b. Conduct an evaluation of the current systems and methods used by each partner organization relevant to the project's focus (i.e., data access/linkage, data dissemination systems, or community health assessment practices). Identify and use available tools to assist in completing this evaluation (e.g., CDC Guidelines for Evaluating Public Health Surveillance Systems).

c. Develop a four year work plan, based on the results of the evaluation, to improve assessment capability relevant to the project's focus. The work plan should include project goals, process and outcome objectives, activities to accomplish the objectives, time frames for completion of activities, identification of project staff responsible for each activity, and specific evaluation measures that will assess whether each goal has been achieved. A work plan template is provided in Attachment II of this program announcement; the template is also available electronically at: *http://www.cdc.gov/epo/dphsi/index.htm* under the heading of ''Capacity Building.''

d. Begin implementation of the work plan.

Years Two through Four

a. Continue implementation of the work plan.

b. Coordinate activities among project partners and with other appropriate organizational units within the state/territorial/tribal health department. Establish a forum for regular, ongoing communication between internal and external partners to carry out project activities and to identify barriers early and modify the work plan as needed.

c. Prepare and disseminate health assessment information through presentations and publication in appropriate forums.

d. Share and discuss project methodology, accomplishments, and barriers through regular participation in quarterly conference calls and an annual Assessment Initiative conference, and through contributions to the CDC Assessment Initiative Web Site.

Year Five

a. Conclude implementation of the work plan.

b. Complete a thorough evaluation of the systems and methods used to improve assessment capability. Include a discussion of the following:

i. Identified strengths and weaknesses of the system/method employed.

ii. Specific examples depicting ways in which the system/method has had a positive impact on public health programs or policy development (as indicated by the evaluation measures in the work plan).

iii. Recommendations regarding modifications or improvements needed to the system or method.

c. Prioritize project activities and outcomes according to the degree of success achieved based on the results of the evaluation. Work with partners to develop a plan to institutionalize high-priority activities/outcomes so they will continue in the absence of federal funding.

Part B.—Evaluating and institutionalizing existing assessment capability and disseminating model assessment methods, systems, and approaches to other interested states

Year One

a. Form or re-activate a project advisory committee made up of representatives from each of the relevant partner groups/organizations, as well as representatives from other key programs or divisions within the state/territorial/tribal health department whose participation is integral to the success of the project.

b. Complete a thorough evaluation of the existing system/method to improve assessment capability in the focus area selected (i.e., data access/linkage, data dissemination systems, or community health assessment practices). Document the results of this evaluation which should include, at a minimum, a discussion of the following:

i. Identified strengths and weaknesses of the system/method employed.

ii. Specific examples depicting ways in which the system/method has had a positive impact on public health programs or policy development.

iii. Summary of modifications or additions needed to improve the system or method, with supporting justification.

c. Develop a four year work plan, based on the results of the evaluation, to further improve the targeted system/method and support the dissemination and transfer of the system/method to a minimum of one other interested state/territory/tribe. The work plan should include project goals, process and outcome objectives, activities to accomplish the objectives, time frames for completion of activities, identification of project staff responsible for each activity, and evaluation measures that will assess whether each goal has been achieved. A work plan template is provided in Attachment II of this program announcement; the template also available electronically at: *http://www.cdc.gov/epo/dphsi/index.htm* under the heading of ''Capacity Building.''

d. Begin implementation of the work plan.

Years Two Through Four

a. Continue implementation of the work plan.

b. Coordinate activities among project partners, including other appropriate organizational units within the state/territorial/tribal health department, and representatives from the recipient state(s)/territory(s)/tribe(s) selected. Establish a forum for regular, ongoing communication between internal and external partners to carry out project activities and to identify barriers early and implement modifications to the work plan as needed.

c. Provide ongoing technical assistance and training to support the successful transfer and implementation of the model system/method by the recipient state(s)/territory(s)/tribe(s) identified. This should include a minimum of one annual site visit to the recipient state(s)/territory(s)/tribe(s) or one annual training session conducted by the sponsoring state, to which representatives of the recipient state(s)/territory(s)/tribe(s) are invited.

d. Prepare and disseminate health assessment information through presentations and publication in appropriate forums.

e. Share and discuss project methodology, accomplishments, and barriers through regular participation in quarterly conference calls and an annual Assessment Initiative conference, and through contributions to the CDC Assessment Initiative Web Site.

Year Five

a. Conclude implementation of the work plan.

b. Work with partners to develop a plan to institutionalize improvements to the system/method; this includes identifying resources to sustain the project in the absence of federal funding.

c. Work with representatives of the recipient state(s)/territory(s)/tribe(s) to conduct an evaluation of the model system/method transfer. Document the results of this evaluation, which should include, at a minimum, a discussion of the following:

i. Outcome of the transfer (i.e., To what extent has the recipient state(s)/territory(s)/tribe(s) been successful in adopting the new system/method and what has been the resulting impact on public health programs or policy?)

ii. Discussion of the factors that had a positive or negative influence on the outcome of the transfer from the perspective of both the donor and recipient state(s)/territory(s)/tribe(s)

iii. Recommendations regarding next steps

2. CDC Activities

a. Provide coordination among the recipient organizations by assisting in the transfer of information, resources, and methodologies.

b. Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.

c. Provide project oversight; engage in ongoing monitoring activities.

d. Sponsor training, as appropriate, on public health assessment practices, methods, and approaches and other relevant topics.

e. Provide assistance to recipients in analyzing, interpreting, and using health assessment data to measure program effectiveness, improve interventions, and formulate relevant policies.

f. Collaborate with recipients in preparing and presenting relevant findings to appropriate state and national audiences.

F. Content

Letter of Intent (LOI)

A LOI is requested, but not required, for this program. The program announcement title and number must appear in the LOI. The letter should be no more than two single spaced pages, printed on one side, with one inch margins, and unreduced fonts. LOIs will be used to estimate the potential review workload and avoid conflict of interest in the review. The letter should include the following information:

1. Number and title of the CDC program announcement
2. Name, address, telephone number, and e-mail address of the Principal Investigator(s)
3. Information as to whether the applicant will be applying under Part A or Part B of the announcement
4. The proposed focus area of the project (*i.e.,* data access/linkage, data dissemination systems, or community health assessment practices)
5. Part B applicants should also describe the existing system or method for improving assessment capability on which their proposed project will be based.

The LOI should be submitted to the Grants Management Specialist listed under the ''Where to Obtain Additional Information'' section of this announcement no later than Friday, July 5, 2002.

Applications

Applicants should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed. The narrative should be no more than 35 single spaced pages, printed on one side, with one inch margins, and unreduced fonts. The program announcement title and number must appear in the application.

Applicants should also submit appendices including curriculum vitae, organizational charts, and letters of support/endorsement from participating partners, as appropriate. The appendices should not exceed an additional 30 pages, printed on one side.

All materials should be provided in an unbound, one-sided, print format, and suitable for photocopying.

Approval signatures from the state epidemiologist and director of the state center for health statistics, or equivalent, are required on the application.

If research is proposed, applicants should also submit an Optional Form 310, Protection of Human Subjects Assurance Identification/Certification/Declaration. This form can be accessed at: *http://forms.psc.gov/forms/OF/OF–310.pdf.*

Applications for funding under Part A should contain the following:

1. Executive Summary

Provide a clear, concise, two page summary of the following:

a. Background/need for the project

b. Focus area selected (*i.e.,* data access/linkage, data dissemination systems, or community health assessment practices)

c. Internal and external project partners identified

d. Major goals and objectives proposed

e. Project's potential for broad public health impact (*e.g.,* generable to other states/territories/ tribes)

f. Applicant's ability to carry out proposed goals and objectives

g. Requested amount of Federal funding

2. Background and Need

Describe the current role of assessment in setting the organization's public health priorities, the organization's current assessment capability, and how this project will strengthen that capability.

3. Project Design and Evaluation

a. Identify the focus area for the project (*i.e.,* data access/linkage, data dissemination systems, or community health assessment practices).

b. Identify the internal and external partner organizations/groups that will be collaborating on the project, along with a rationale for their involvement.

c. Provide (in the appendices) a copy of the applicant agency's organizational chart, indicating where the proposed Assessment Initiative Project will be placed. The chart should also identify the internal linkages with other programs/divisions that will be necessary to successfully carry out the project.

d. Develop a work plan to improve assessment capability relevant to the focus area selected. The work plan should include both long-term (five year) goals and short-term (one year) goals. Short-term goals should have corresponding objectives, activities, time frames, and responsible team members identified. Both short- and long-term goals should have corresponding evaluation measures (''measures of effectiveness'') that will be used to measure the intended outcome of the goal. Definitions and requirements for these components are described below:

i. Project goals (general statements of what the project hopes to accomplish)

Note: It is mandatory that applicants include a goal aimed at identifying resources to sustain successful project activities beyond the five year funding cycle.

Applicants selecting focus area two, and whose projects involve electronic data dissemination systems, should also include a goal aimed at achieving the interoperability standards and specifications outlined in the NEDSS guidance found at: *http://www.cdc.gov/nedss*, or the CDC Information Technology Functions and Specifications found at: *http://www.cdc.gov/cic/functions-specs.*

ii. Process and outcome objectives (specific, measurable statements that describe what is to be accomplished under each goal)

iii. Activities (action steps/tasks that will be completed under each objective in order to achieve that objective)

iv. Time frame (anticipated time frame for accomplishing each activity).

v. Project staff responsible for each activity (should include representatives from all partner organizations).

vi. Evaluation measures (quantitative measures of effectiveness that will be used to measure the intended outcome of the goal). Evaluation measures should include components to assess the project's impact on public health programs or policy.

Applicants should use the work plan template provided to develop their short-term (one year) work plan. This template is included as Attachment II of this program announcement; it is also available electronically at: *http://www.cdc.gov/epo/dphsi/index.htm* under the heading of ''Capacity Building.''

Long-term (five year) goals and corresponding evaluation measures need not be included on the template, but should be included in the narrative component of this section.

4. Ability to Carry Out the Proposed Project

a. Provide examples of previous efforts to conduct assessment activities and describe the impact these activities have had on public health programs or policy. Where possible, include examples in which data from two or more public or private sources have been integrated to serve this purpose.

b. Describe the organization's current relationship with identified partners with regard to assessment; discuss the availability of data and information for the project from the proposed partners.

c. Identify the proposed project staff and describe their qualifications and experience in areas relevant to the project's focus (e.g., epidemiology, surveillance, statistical applications, program management, policy development, community health assessment, electronic health information systems). Include curriculum vitae for key project staff in the appendices.

5. Potential for Public Health Impact

a. Describe the applicability and relevance of the proposed project, and the type of data and information targeted, to other states/territories/tribes.

b. Describe ways in which this project will benefit the applicant organization and external partner organizations.

6. Commitment from Internal/External Partners

Provide evidence of internal and external partners' willingness to support and be actively involved in carrying out project objectives. (If letters of support are submitted, they should be included in the Appendices).

7. Budget

a. Provide a detailed budget request and complete line item justification for all proposed operating expenses consistent with the recipient activities proposed. Be precise about the purpose of each budget item as it relates to the project.

b. The annual budget should include funding for two staff members to make one three-day trip to attend an annual Assessment Initiative Conference. (Base cost estimates on travel to Atlanta).

c. If applicable, applicants requesting monies for contracts should include the name of the person or firm to be contracted, a description of the services to be performed, an itemized and detailed budget including justification, the period of performance, and the method of selection.

d. Funding levels for years two through five should be estimated.

8. Approval signatures from the state epidemiologist and director of the state center for health statistics, or equivalent.

9. Appendix containing curriculum vitae, organizational charts, and letters of support/endorsement from participating partners, as appropriate.

Applications for funding under Part B should contain the following:

1. Executive Summary

Provide a clear, concise, two page summary of the following:

a. Focus area selected (i.e., data access/linkage, data dissemination systems, or community health assessment practices).

b. Brief description of the existing system/method the project will focus on.

c. Impact on public health programs or policy that resulted from the implementation of the system/method.

d. Major goals and objectives proposed.

e. Internal and external project partners identified and specific state(s)/territory(s)/tribe(s) identified to adopt the system/method.

f. Project's potential for broad public health impact (e.g. the ability to generalize to other states/territories/tribes).

g. Requested amount of federal funding.

2. Description of Existing System/Method to Improve Assessment Capability

a. Provide a thorough description of the existing system/method for assessment and identify the appropriate focus area it addresses (i.e., data access/linkage, data dissemination systems, or community health assessment practices).

b. Explain how the system/method is generalized to other states/territories/tribes.

c. List internal/external partners who collaborated on developing/implementing the existing system and explain their roles in the process.

d. Describe the impact on public health programs or policy that resulted from implementing the system/method.

e. Note: It is mandatory that applicants include documentation from

a minimum of one other state/territory/tribe confirming their interest in adopting and utilizing the system/method.

3. Project Design and Evaluation

a. Identify the external and internal partner organizations/groups that will be collaborating on the project, along with a rationale for their involvement.

b. Provide (in the appendices) a copy of the applicant agency's organizational chart indicating where the proposed Assessment Initiative Project will be placed. The chart should also identify the internal linkages with other programs/divisions that will be necessary to successfully carry out the project.

c. Develop a work plan to improve assessment capability relevant to the focus area selected.

The work plan should include both long-term (five year) goals and short-term (one year) goals. Short-term goals should have corresponding objectives, activities, time frames, and responsible team members identified. Both short and long-term goals should have corresponding evaluation measures that will be used to measure the intended outcome of the goal. Definitions and requirements for these components are described below:

i. Goals (general statements of what the project hopes to accomplish);

Note: It is mandatory that applicants include a goal aimed at identifying resources to sustain successful project activities beyond the five year funding cycle, and a goal aimed at successfully transferring the system/method to a minimum of one other interested state/territory/tribe.

Applicants selecting focus area two, and whose projects involve electronic data dissemination systems, should also include a goal aimed at achieving the interoperability standards and specifications outlined in the NEDSS guidance found at: *http://www.cdc.gov/nedss*, or the CDC Information Technology Functions and Specifications found at: *http://www.cdc.gov/cic/functions-specs*.

ii. Process and outcome objectives (specific, measurable statements that describe what is to be accomplished under each goal).

iii. Activities (action steps/tasks that will be completed under each objective in order to achieve that objective).

iv. Time frame (anticipated time frame for accomplishing each activity).

v. Project staff responsible for each activity (should include representatives from all partner organizations).

vi. Evaluation measures (quantitative measures of effectiveness that will be used to measure the intended outcome of the goal); evaluation measures should include components to assess the project's impact on public health programs or policy.

Applicants should use the work plan template provided to develop their short-term (one-year) work plan. This template is included as Attachment II of this program announcement; it is also available electronically at: *http://www.cdc.gov/epo/dphsi/index.htm* under the heading of ''Capacity Building.''

Long-term (five year) goals and corresponding evaluation measures need not be included on the template but should be included in the narrative component of this section.

4. Ability to Carry Out the Proposed Project

Identify the proposed project staff and describe their qualifications and experience in areas relevant to the project's focus (e.g., epidemiology, surveillance, statistical applications, program management, policy development, community health assessment, electronic health information systems). Include curriculum vitae for key project staff in the appendices.

5. Potential for Public Health Impact

a. Describe the applicability and relevance of the proposed project, and the type of data and information targeted, to other states/territories/tribes.

b. Describe ways in which this project will benefit the applicant organization, the external partner organizations, and the specific recipient state(s)/territory(s)/tribe(s) selected to adopt the system/method.

6. Commitment From Internal/External Partners.

Provide evidence of internal and external partner's willingness to support, and be actively involved in, carrying out project objectives. (If letters of support are submitted, they should be included in the Appendices).

7. Budget

a. Provide a detailed budget request and complete line-item justification for all proposed operating expenses consistent with the activities proposed. Be precise about the purpose of each budget item as it relates to the project.

b. The annual budget should include funding for two staff members to make one three day trip to attend an annual Assessment Initiative Conference. (Base cost estimates on travel to Atlanta).

c. If applicable, applicants requesting monies for contracts should include the name of the person or firm to be contracted, a description of the services to be performed, an itemized and detailed budget including justification, the period of performance, and the method of selection.

d. Funding levels for years two through five should be estimated.

8. Approval signatures from the state epidemiologist and director of the state center for health statistics, or equivalent.

9. Appendix containing curriculum vitae, organizational charts, and letters of support/endorsement from participating partners, as appropriate.

G. Submission and Deadline

Letter of Intent (LOI)

On or before Friday, July 5, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement. (A letter of intent is requested but not required).

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 P.M. Eastern Time on Friday, July 19, 2002, submit the application to the Technical Information Management Section, Office of the Director, Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an

application is received after closing due to the following: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Note: For the purposes of this cooperative agreement, ''Measures of Effectiveness'' are defined as the ''Evaluation Measures'' discussed under Evaluation Criteria.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Applications for Funding under Part A:

1. Project Design (25 points)

a. The extent to which the applicant has identified one focus area for the project (i.e., data access/linkage, data dissemination systems, or community health assessment practices).

b. The extent to which the applicant has identified internal and external project partners, and included an organizational chart in the appendices showing where the project will be placed and the necessary linkages with other programs/divisions.

c. The degree to which the applicant provides a clear and organized proposed project plan.

d. The extent to which the work plan and time line appear reasonable and consistent with the guidelines in the program announcement (i.e., goals, objectives, and activities are appropriate based on the recipient activities described in the program announcement; both five year and one year goals are documented; one year goals have corresponding measurable objectives, activities, time frames, and responsible staff identified).

e. The extent to which the applicant has included a reasonable goal aimed at identifying resources to sustain successful project activities beyond the five year funding cycle.

f. For applicants whose projects involve electronic data dissemination systems, the extent to which a goal has been included to address achievement of the interoperability standards and specifications outlined in the NEDSS guidance found at: *http://www.cdc.gov/nedss*, or the CDC Information Technology Functions and Specifications found at: *http://www.cdc.gov/cic/functions-specs.*

2. Potential for Public Health Impact (20 points)

a. The extent to which the applicant describes anticipated project outcomes and discusses the related impact on public health policy and/or program management for the participating organizations/agencies.

b. The extent to which the applicant demonstrates the significance of project goals and proposed outcomes to a broader public health audience, including other states/territories/tribes.

3. Background and Need (15 points)

a. The extent to which the applicant has adequately described the organization's current assessment capability and provided a justification for the project.

b. The extent to which the applicant has adequately described how this project will strengthen the capability to conduct assessment activities.

4. Evaluation (15 points)

a. The extent to which the applicant provides reasonable evaluation measures (i.e., required ''measures of effectiveness'') that measure the intended outcomes of both one year and five year goals (see work plan template for more information).

b. The extent to which the evaluation measures provided are appropriate to assess the project's impact on public health programs or policy.

5. Ability to Carry Out the Proposed Project (15 points)

a. The extent to which the applicant provides information on previous assessment activities conducted and describes the impact of those activities on public health programs or policy.

b. The extent to which the applicant provides evidence of prior experience in integrating information/data from two or more existing public or private sources for program development and evaluation.

c. The extent to which the applicant provides evidence of a working relationship with identified partners and demonstrates the availability of data from those partners, as appropriate.

d. The extent to which the applicant demonstrates the ability to successfully carry out the project, taking into consideration the depth, breadth, and complexity of the proposed objectives, the available resources/staff, and the proposed time line.

e. The extent to which the applicant provides evidence that key project staff have experience in areas relevant to the project's focus (e.g., epidemiology, surveillance, statistical applications, program management, policy development, community health assessment, electronic health information systems).

6. Commitment from Internal/External Partners (10 points)

a. The extent to which the applicant provides evidence that the organization has interest, support, and commitment from identified external partner organizations and groups.

b. The extent to which the applicant provides evidence that the organization has internal support for the project from administration and from other divisions/departments whose involvement is integral to the success of the project.

7. Budget and Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and applicant's implementation plan.

8. Human Subjects Protection (not scored)

If applicable, the extent to which the application adequately addresses the requirements of Title 45 CFR, part 46 for the protection of human subjects.

Applications for Funding Under Part B

1. Description of Existing System/Method to Improve Assessment Capability (25 points)

a. The extent to which the applicant provides a thorough description of a preexisting system/method developed and implemented by the applicant to improve assessment capability around data access/linkage, data dissemination, or community assessment practices.

b. The extent to which the applicant provides reasonable evidence that the system/method is able to generalize to other states/territory(s)/tribe(s).

c. The extent to which the applicant provides evidence that they have collaborated with external partner organizations/groups in the development and implementation of the system or method.

d. The extent to which the applicant provides evidence of a positive impact on public health policy or program management as a result of implementing the system/method.

e. The extent to which the applicant provides evidence of a minimum of one other state/territory/tribe's interest in using the system/method (i.e., letters/written documentation). This is a mandatory requirement.

3.2. Project Design (25 points)

a. The extent to which the applicant identifies internal and external project partners and includes an organizational chart in the appendices showing where the project will be placed and the necessary linkages with other programs/divisions.

b. The degree to which the applicant provides a clear and organized proposed project plan.

c. The extent to which the work plan and time line appear reasonable and consistent with the guidelines in the program announcement (i.e., goals, objectives, and activities are appropriate based on the recipient activities described in the program announcement; both five year and one year goals are documented; one year goals have corresponding measurable objectives, activities, time frames, and responsible staff identified).

d. The extent to which the applicant includes a reasonable goal aimed at successfully disseminating the system/method to a minimum of one other state/territory/tribe and a goal aimed at identifying resources to sustain successful project activities beyond the five year funding cycle.

e. For applicants whose projects involve electronic data dissemination systems, the extent to which a goal has been included to address achievement of the interoperability standards and specifications outlined in the NEDSS guidance found at: *http://www.cdc.gov/nedss*, or the CDC Information Technology Functions and Specifications found at: *http://www.cdc.gov/cic/functions-specs.*

3. Evaluation (15 points)

a. The extent to which the applicant provides reasonable evaluation measures (i.e., required ''measures of effectiveness'') to measure the intended outcomes of both one year and five year goals (see work plan template for more information).

b. The extent to which the evaluation measures provided are appropriate to assess the project's impact on public health programs or policy.

4. Ability to Carry Out the Proposed Project (15 points)

a. The extent to which the applicant demonstrates the ability to successfully carry out the project, taking into consideration the depth, breadth, and complexity of the proposed objectives, the available resources/staff, and the proposed time line.

b. The extent to which the applicant provides evidence that key project staff have experience in areas relevant to the project's focus (e.g., epidemiology, surveillance, statistical applications, program management, policy development, community health assessment, electronic health information systems).

5. Potential for Public Health Impact (15 points)

a. The extent to which the applicant describes anticipated project outcomes and discusses the related impact on public health policy and/or program management for the participating organizations/agencies and the state(s)/territory(s)/tribe(s) selected to adopt the system/method.

b. The degree to which the applicant demonstrates the relevance/the ability to generalize project goals and proposed outcomes to a broader public health audience, including other states/territories/tribes.

6. Commitment from Internal/External Partners (5 points)

a. The extent to which the applicant organization provides evidence of interest, support, and commitment from identified external partner organizations and groups.

b. The extent to which the applicant organization provides evidence that they have internal support for the project from administration and from other divisions/departments whose involvement is integral to the success of the project.

7. Budget and Justification (not scored)

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement and applicant's implementation plan.

8. Human Subjects Protection (not scored)

If applicable, the extent to which the application adequately addresses the requirements of Title 45 CFR, Part 46 for the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness). A format will be provided by the Project Officer.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this program announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

J. Pre-application Conference Call

A teleconference will be held on Friday, June 28, from 1 to 2:30 P.M. Eastern Time, for all interested applicants. The purpose of the call is to describe the application process and respond to any questions regarding the program announcement. To connect to the call, dial: 1–800–311–3437 and enter the following conference code: 339555. Participants in the Atlanta area should dial: (404)639–3277 to connect to the call and should not use the 800 number.

K. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Mattie B. Jackson, Grants Management Specialist, Requisition and Assistance Branch A,

Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2696, E-mail address: *mij3@cdc.gov.*

For program technical assistance, contact: Pat Schumacher, Epidemiology Program Office, Division of Public Health Surveillance & Informatics, Applied Sciences Branch, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–74, Atlanta, GA 30341–3717, Telephone: (770) 488–8375, E-mail address: *prs5@cdc.gov.*

Dated: June 6, 2002.

Edward Schultz,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–14729 Filed 6–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Consumer Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting consumer representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2003. FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups.

DATES: Nominations for vacancies listed in this notice should be received by July 12, 2002.

ADDRESSES: All nominations and curricula vitae (which include nominee's office address, telephone number, and e-mail address) should be submitted in writing to Linda Ann Sherman, Advisory Committee and Oversight Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: LSHERMAN@OC.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting members representing consumer interests for the vacancies listed as follows:

Medical Devices Panels	Approximate Date Consumer Representative Is Needed
Anesthesiology and Respiratory Therapy	Immediately
Circulatory System	July 1, 2002
Gastroenterology and Urology	Jan. 1, 2003
General Hospital and Personal Use	Jan. 1, 2003
Immunology	Mar. 1, 2003
Microbiology	Mar. 1, 2003
Molecular and Clinical Genetics	June 1, 2003
Radiological	Feb. 1, 2003

I. Function

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act)); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Consumer Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as a member one nonvoting representative of consumer interests.

III. Nomination Procedure

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedure

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 5, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–14838 Filed 6–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 29 and 30, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen Reedy or LaNise Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On both days, the committee will discuss the clinical relevance of different classifications of pain as well as discussion of appropriate clinical trial models and designs for medications which would be indicated for each classification of pain.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 17, 2002. Oral presentations from the public will be scheduled on July 29, 2002, between approximately 1 p.m. and 3 p.m., and on July 30, 2002, between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 17, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact LaNise Giles at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 3, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–14680 Filed 6–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0276]

Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance document for industry entitled ''Channels of Trade Policy for Commodities With Vinclozolin Residues.'' This guidance presents FDA's policy for implementing, for the pesticide chemical vinclozolin, the channels of trade provision in the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food Quality Protection Act (FQPA) of 1996. The guidance is intended to assist firms in understanding FDA's planned approach to the enforcement of this provision of the FQPA with regard to residues of vinclozolin in food.

DATES: Submit written or electronic comments concerning the guidance at any time.

ADDRESSES: Submit written comments concerning the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written requests for single copies of the guidance document entitled ''Channels of Trade Policy for Commodities With Vinclozolin Residues'' to the Office of Plant and Dairy Foods and Beverages (HFS–305), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX 301–436–2651, e-mail: mkashtoc@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of July 10, 2001 (66 FR 35990), FDA announced the availability of a draft guidance document entitled ''Channels of Trade Policy for Commodities With Vinclozolin Residues.'' The agency has finalized the draft guidance after receiving no comments on the document. In a notice published in the **Federal Register** of October 23, 2001 (66 FR 53614), FDA announced that it was submitting to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 the collection of information entitled ''Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues.'' In the October notice, FDA estimated that the guidance entitled ''Channels of Trade Policy for Commodities With Vinclozolin Residues'' would create an estimated annual reporting burden of 921 hours and an estimated annual recordkeeping burden of 496 hours. The October notice also requested comments on these burden estimates. On March 25, 2002, OMB informed FDA that it had approved the information collection until March 31, 2005.

II. Guidance Document

This final guidance document is being issued as level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the channels of trade provision and how this provision relates to FDA-regulated products with residues of vinclozolin. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Copies of this guidance also may be downloaded to a personal computer with access to the Internet. The final guidance document may be accessed at http://www.cfsan.fda.gov under ''How to Obtain FDA Food & Cosmetic Guidance Documents.''

IV. Comments

Interested persons may, at any time, submit written comments concerning the guidance entitled ''Channels of Trade Policy for Commodities With Vinclozolin Residues'' to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–14840 Filed 6–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0228]

Medical Devices; Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA.'' This guidance document represents the agency's current thinking on the technical content and clinical considerations for a premarket approval application (PMA) for an implantable middle ear hearing device (IMEHD). This guidance provides information to consider for developing the clinical studies and generating the scientific evidence that will provide reasonable assurance of safety and effectiveness of the IMEHD for its intended use. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on the guidance by September 10, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Eric Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, ext. 187.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance describes the kind of information needed to allow FDA to evaluate the safety and effectiveness of an IMEHD. It is based in part upon current scientific knowledge, current FDA review criteria, and discussions and recommendations resulting from an Ear Nose and Throat Devices Advisory Panel Meeting that was held on June 18, 1999.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on IMEHD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

In order to receive the ''Implantable Middle Ear Hearing Device; Draft Guidance for Industry and FDA,'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1406) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Internet site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance by September 10, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 31, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–14839 Filed 6–11–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; National Child Death Review Resource Center Demonstration Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $300,000 in fiscal year (FY) 2002 funds is

available to fund a single competitive cooperative agreement to demonstrate the effectiveness of a National Child Death Review Resource Center (NCDRRC). The NCDRRC will assist States and localities in using the Child Death Review (CDR) process to promote improved health services delivery and risk reduction and public health prevention programs.

Eligibility is open to any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)). Awards will be made under the program authority of section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 USC 701(a)(2)), or ''SPRANS.'' Funds for this award were appropriated under Public Law 107–116. The award will be made for a period of three years. Additional funding of up to $300,000 annually in the second and third years is contingent on the availability of funds and grantee performance. No matching funds are required.

DATES: Applicants for this program are requested to notify the Maternal and Child Health Bureau (MCHB) by June 25, 2002. Notification of intent to apply can be made in one of three ways: telephone: 301–443–2250; e-mail *dheppel@hrsa.gov;* mail, MCHB, HRSA; Division of Child, Adolescent and Family Health, Parklawn Building, Room 18A–39; 5600 Fishers Lane; Rockville, MD 20857. The deadline for receipt of applications is August 2, 2002. Applications will be considered ''on time'' if they are either received at the HRSA Grants Application Center on or before the deadline date or postmarked on or before the deadline date. The projected award date is September 1, 2002.

ADDRESSES: To receive a complete application kit which includes the number of copies of the application to be submitted and instructions on how to fill-out the application form, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning June 1, 2002, or register on-line at: *http://www.hrsa.gov/,* or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the Catalog of Federal Domestic Assistance (CFDA) number 93.110 when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities that provide assistance. All applications should be mailed: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg MD, telephone: 1–877–HRSA–123 (477–2123), e-mail: *hrsagac@hrsa.gov.*

This application guidance and the required form for the NCDRRC Demonstration Program may also be downloaded in either WordPerfect 6.1 or Adobe Acrobat format (.pdf) from the MCHB home page at *http://www.mchb.hrsa.gov/.* Please contact Joni Johns at 301–443–2088 or *jjohns@hrsa.gov/,* if you need technical assistance in accessing the MCHB home page via the Internet.

This announcement will appear on the HRSA home page at: *http://www.hrsa.gov/.* **Federal Register** notices can be accessed electronically by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

FOR FURTHER INFORMATION CONTACT: David Heppel or Peter Conway, 301–443–2250, e-mail: *pconway@hrsa.gov* (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Curtis Colston, 301–443–1440; e-mail, *ccolston@hrsa.gov* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

For more than a decade the Maternal and Child Health Bureau has been deeply involved in supporting States and localities in the process of conducting Fetal and Infant Mortality Reviews (FIMR). A significant component of that support has been through the establishment of a National Fetal and Infant Mortality Review Resource Center. The intent of NCDRRC is to establish a similar resource center for CDR, to assist States and localities in examining factors contributing to poor child health outcomes from a broad public health perspective.

CDR is a community-based action process aimed at helping communities identify and solve problems contributing to poor child health outcomes. Specifically, using death as a sentinel event, CDR involves a systematic examination of personal characteristics such as age, race/ethnicity, and gender, and factors that play a role in death, integrating information about the health and safety of individuals with information descriptive of medical care and community health and social/welfare systems.

Information from the CDR process can then be used to focus planning and policy development, to direct health systems development, and to enhance efforts to develop and maintain risk reduction and prevention programs for children. The CDR process enhances the ability of State and local health departments to carry out the core public health functions of assessment, policy development, and quality assurance.

The CDR process, while focused on death, also has the potential to be adapted for use in examining *nonfatal* adverse events affecting maternal and child health and safety. A few States have begun to expand into this broader area.

Authorization

Section 501(a)(2) of the Social Security Act (42 U.S.C. 701(a)(2)).

Purpose

The purpose of this cooperative agreement is to demonstrate the effectiveness of developing an NCDRRC to assist States and localities in using the CDR process to promote improved health services delivery and risk reduction and public health prevention programs. Specifically, this cooperative agreement will determine how an NCDRRC could:

(1) Serve as a technical support to States, particularly State Title V agencies, and communities as they develop, implement, and sustain CDR as a community-based process to assess and improve services and systems for children and adolescents;

(2) Refine the methodology for CDR through continuous assessment of the state of the field, trends, and feedback from States and communities;

(3) Support expanded use of the CDR process to address other adverse events (e.g., morbidity) affecting the MCH population, and

(4) Promote collaboration with other MCH related mortality/morbidity review processes to increase effectiveness and reduce duplication of effort.

Eligibility

Under SPRANS project grant regulations at 42 CFR 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450(b)), is eligible to apply for grants and cooperative agreements covered by this announcement. Under the President's initiative, community-based and faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to consider this initiative.

Funding Levels/Project Periods

The administrative and funding instrument to be used for the NCDRRC will be a cooperative agreement, in which substantial MCHB scientific and/or programmatic involvement with the awardee is anticipated during the performance of the project. Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Participation in meetings conducted during the period of the cooperative agreement.

(2) Ongoing review of activities and procedures to be established and implemented.

(3) Review of project information prior to dissemination.

(4) Review of information on project activities.

(5) Assistance with the establishment of contacts with Federal and State agencies, MCHB grant projects, and other contacts that may be relevant to the project's mission; and referrals to these agencies.

One project will be approved for three years. Up to $300,000 in fiscal year 2002 funds will be used to fund the first year. Additional funding of up to $300,000 annually in years two and three will be contingent on the availability of funds, and grantee performance.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures.

Applications will be reviewed using the following criteria:

1. Knowledge and Understanding of the Issues relating to CDR (Weight: 20%)

- The degree of understanding of the beginnings of CDR and the evolution of the CDR process as a public health model
- The degree of thoroughness in describing the CDR process and the challenges involved in creating and sustaining it in States and localities
- The extent of applicant knowledge of community-based systems in child and adolescent health and safety
- The extent of applicant knowledge of the individuals and organizations involved in the CDR process and the relationship of CDR and FIMR

2. Soundness and Adequacy of Project Plan (Weight: 30%)

- The extent to which the project objectives address the program purpose and are measurable, time-framed, and appropriate in relation to both the program requirements and identified needs.
- The degree to which the program areas outlined in the grant guidance have been addressed, prioritized and justified.
- The quality and feasibility of the project plan or methodology and its relation to the project's goals and objectives.
- The extent to which the proposed approach identifies the resources that will be used to implement the strategies.
- The degree to which the approaches are technically sound and appropriate to the project goals and objectives.

3. Soundness of Evaluation Plan (Weight: 10%)

- The soundness of the plan for evaluating the process and outcome of this project.
- The extent to which the applicant describes how the project staff will determine the degree to which proposed activities are being successfully conducted and completed, based on the objectives outlined.

4. Applicant's Capability and Capacity (Weight: 30%)

- The extent to which the applicant has demonstrated expertise and its capability to oversee and successfully carry out the project.
- Evidence that a sufficient number of project personnel and resources are proposed. Biographical sketches/curricula vitae document education, skills and experience that are relevant and necessary for the proposed project.

5. Appropriateness of Budget (Weight: 10%)

- The extent to which the proposed budget is realistic, adequately justified, and consistent with the proposed project plan.
- The extent to which the costs of administration and monitoring/evaluation are reasonable and proportionate to the costs of service provision.
- The degree to which the costs of the proposed project are economical in relational to the proposed service utilization.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, in addition to those referenced above. Also, to the extent that regulatory review criteria generally applicable to all Title V programs (at 42 CFR 51a) are relevant to this specific project, such factors will be taken into account.

Paperwork Reduction Act

OMB approval for any data collection in connection with this cooperative agreement will be sought, as required under the Paperwork Reduction Act of 1995.

Executive Order 12372

The MCH Federal Set-Aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: May 16, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–14681 Filed 6–11–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Host-Tumor Cell Interactions in Myeloma: Therapeutic Applications.

Date: July 1–3, 2002.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14804 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Committee: National Cancer Institute Special Emphasis Panel PAR–02–052 Competing Supplements for Organotypic Models of Cancer.

Date: June 21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, EPN, Conference Room J, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C Michael Kerwin, PhD, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, Msc 8329, Bethesda, MD 20892–8329, 301–496–7412, *kerwinm@mail.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. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14805 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Cancer Epidemiology and Prevention Research.

Date: July 16–17, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93,396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14809 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 secretes 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 Cancer Institute Special Emphasis Panel, Behavioral Research and Cancer Control.

Date: July 23, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14810 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Genetic Modulation of Cellular Radiation Responses.

Date: June 19–21, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Richmond Hotel, 100 S. 12th Street, Richmond, VA 23219.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 8th Floor, Room 8137, 6116 Executive Boulevard, Bethesda, MD 20892. (301) 594–0114. *amads@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14816 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Tissues/Organs.[1]

Date: July 10–11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: David T. George, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892–7924. (301) 435–0280. *georged@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14808 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel Services Research Applications on serious Mental Illness

Date: June 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joel Sherrill, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, 301–443–6102, *jsherril@mail.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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14801 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel SEP Teleconference for Harrison.

Date: June 7, 2002.[1]

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy, 6701 Democracy Blvd, Suite 707 MSC 4870, Bethesda, MD 20892–4870 (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, National

[1] This document was received at the Office of the Federal Register on June 7, 2002.

[1] This document was received at the Office of the Federal Register on June 7, 2002.

Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971, *jrichters@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14803 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

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 meetings.

The meetings 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 Allergy and Infectious Diseases Special Emphasis Panel Comprehensive International Program of Research on AIDS.

Date: June 19, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@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.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Comprehensive International Program of Research on AIDS (CIPRA).

Date: June 25, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2219, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159w@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Viral Triggering Mechanism of Autoimmune Pathogenesis.

Date: July 10, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892–2616, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *nn30t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Gene Therapy for Human SCID.

Date: July 16, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *nn30t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Glycolipid Presentation by CDId.

Date: July 18, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 2156, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *nn30t@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Dys/Regulation of the Immune System in Autoimmunity.

Date: July 24, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892–2616, (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *nn30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14806 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel Services Research Review Committee II.

Date: June 18, 2002.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Martha Ann Carey, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14811 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

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 meetings.

The meetings 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 Dental and Craniofacial Research Special Emphasis Panel 02–83. Review of R01 Grants.

Date: July 15, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Cranofacial Res, 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–80, Review of Health Disparities Infrastruture RFA DE02–003.

Date: July 17, 2002.

Time: 12 p.m. to 5 p.m.

Agenda: to provide concept review of proposed grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anna Sandberg, MPH, DRPH, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–3089.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–70, Review of RFA DE–02–007, Oral Aids.

Date: July 28–29, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–91, Review of R44 Grants.

Date: August 6, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm, Bethesda, MD 20892–6402.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–90, Review of R44 Grants.

Date: August 13, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 02–89, Review of R44 Grants.

Date: August 29, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Bulding, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14812 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Report on Carcinogens (RFP–ES–02–02).

Date: July 9, 2002.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, South Campus, Bldg 101, Conference Room-A, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14813 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Barbados Cancer Study.

Date: July 1, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basis Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, national Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14814 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, 02–72, Review of K08s, K23s, R03s, F32 Grants.

Date: June 20–21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, PhD, MD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14815 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel, Modifying and Testing Efficacious Behavioral Therapies to Make them More Community Friendly.

Date: July 3, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14817 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

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 meetings.

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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Interactive CD ROM Training for Prevention Providers''.

Date: June 12, 2002.

Time: 1 p.m. to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

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.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Preventing Substance Abuse with Multi-media Life Science''.

Date: June 19, 2002.

Time: 9:30 a.m. to 11:30 am.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14819 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, Internet Connections.

Date: July 22–23, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14820 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings 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: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 13–14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (05) Adult Psychopathology.

Date: June 13, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.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.

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.

Date: June 17–18, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, 301–435–1742.

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (10).

Date: June 17–18, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–8367, *atreyap@csr.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.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.
Date: June 18–19, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, 301–435–1151, *pyperj@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (06).
Date: June 18, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, 301–435–1786.
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.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.
Date: June 20–21, 2002.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Grand, 2350 M Street NW, Washington, DC 20037.
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152. *edwardss@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BNP (1) Chemistry/Biophysics BRP Panel.
Date: June 21, 2002.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (04) ORTH Study Section conflicts.
Date: June 23, 2002.
Time: 6 p.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, (301) 435–1786.
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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–N (21).
Date: June 24, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892, (301) 435–3554. *shirleym@csr.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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alcohol and Toxicology Subcommittee 4.
Date: June 25, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. 301–435–2359. shayiqr@csr.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.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 3.
Date: June 27, 2002.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007–3701.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892. (301) 435–1168.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: June 27–28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212. *johnson@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.
Date: June 27–28, 2002.
Time: 8 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Sciences, Nursing, Epidemiology and Methods-4.
Date: June 27–28, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F05 (20).
Date: June 27–29, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 670–1 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024. *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neurosciences-5 Study Section.
Date: June 27–28, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Sherry L Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 6.
Date: June 27–28, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005.
Contact Person: Michael Nunn, PhD, Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *Nunnm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–2(01).
Date: June 27–28, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1100, MSC 7848, Bethesda, MD 20892, (301) 451–8008.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Social Sciences, Nursing, Epidemiology and Methods 3.
Date: June 27–28, 2002.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–4 (04) Language and Communication.
Date: June 27, 2002.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Cheri Wiggs, PhD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6.
Date: June 27–28, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 3.
Date: June 27–28, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MDCN–7 (01).
Date: June 27, 2002.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 AARR–3 (10).
Date: June 28, 2002.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CPA (05) Chemoprevention.
Date: June 28, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *fungv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tropical Medicine and Parasitology (03).
Date: June 28, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: To review and evaluate grant applications.
Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (02).
Date: June 28, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MEP (01) Tumor suppressor gene.
Date: June 28, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Virology (02).
Date: June 28, 2002.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151. *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GNM (01).
Date: June 28, 2002.
Time: 2:30 p.m. to 5 p.m..
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890. 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (02).
Date: June 28, 2002.
Time: 12 p.m. to 1 p.m..
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

(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: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14800 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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 meetings.

The meetings 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: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–2 (02) .

Date: June 10, 2002.[1]

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ramesh K. Nayak, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892. (301) 435–1026.

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.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Cell Development and Function—2 Study Section (01).

Date: June 17–19, 2002.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: La Jolla Coves Suites, 1155 Coast Blvd., La Jolla, CA 92037.

Contact Person: Ramesh K. Nayak, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892. (301) 435–1026.

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.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, ZRG1 GMA–1 (15).

Date: June 18, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Harold M. Davidson, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. 301/435–1776. *davidsoh@csr.nih.gov.*

This notice being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, ZRG1 EDC–3 (02).

Date: June 19, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Mary Ann Guadagno, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892. (301) 451–8011.

This notices being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, ZRG1 SSS–G (01).

Date: June 26–27, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Camilla E. Day, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1037. *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, SNEM1 Member Applications.

Date: June 27, 2002.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Denise Wiesch, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684.

(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: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14802 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Endocrinology Study Section, June 17, 2002, 8 a.m. to June 18, 2002, 5 p.m., Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102–2205 which was published in the **Federal Register** on May 30, 2002, 67 FR 37849–37851.

The meeting will be held at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94109. The dates and time remain the same. The meeting is closed to the public.

Dated: June 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14818 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP)

Announcement of and Request for Public Comments on Substances Nominated to the National Toxicology Program (NTP) for Toxicological Studies and on Study Recommendations Made by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC)

Summary

The NTP continuously solicits and accepts nominations for toxicological

[1] This document was received at the Office of the Federal Register on June 7, 2002.

studies to be undertaken by the program. Nominations of substances of potential human health concern are received from Federal agencies, the public, and other interested parties. These nominations undergo several levels of review before selections for testing are made and toxicological studies are designed and implemented. Evaluation by the NTP ICCEC is the initial external review step in the NTP's formal selection process for NTP study nominations. On April 17, 2002 the ICCEC met to review 19 new nominations and make study recommendations. This announcement (1) provides brief background information regarding the substances nominated to NTP for study, (2) presents the ICCEC's study recommendations from its April 17, 2002 meeting, (3) solicits public comment on the nominations themselves and on the study recommendations by the ICCEC, and (4) requests the submission of additional relevant information for consideration by the NTP in its continued evaluation of these nominations.

Review of Study Nominations

At it's meeting on April 17, 2002, the ICCEC reviewed 19 new nominations for NTP studies. For 14 of these nominations, one or more types of toxicological studies were recommended, and for 5 nominations, no studies were recommended at this time. The nominated substances with CAS numbers, nomination source, nomination rationale, specific study recommendations, and other pertinent information are given in the attached tables.

Evaluation by the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) is the initial external review step in the NTP's formal selection process for NTP study nominations. The ICCEC is composed of representatives from the Agency for Toxic Substances and Disease Registry, U.S. Consumer Product Safety Commission, Department of Defense, U.S. Environmental Protection Agency, U.S. Food and Drug Administration's National Center for Toxicological Research, National Cancer Institute, National Center for Environmental Health, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, National Library of Medicine, and the Occupational Safety and Health Administration. The ICCEC meets once or twice annually to evaluate groups of new study nominations and to make recommendations with respect to both specific types of studies and testing priorities.

Request for Public Comments

Interested parties are invited to submit comments or supplementary information on the nominated substances and study recommendations that appear in the attached tables. The NTP welcomes toxicology and carcinogenesis information from completed, ongoing, or planned studies, as well as information on current production levels, use patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is also interested in identifying appropriate new animal models for mechanistic based research, including transgenic or knockout mice, and welcomes comments regarding the use of specific animal models to address scientific questions relevant to the nominated substances and studies under consideration. All information received will be considered by the NTP in its continued review of these nominations. Comments or information should be sent to Dr. Scott Masten by August 12, 2002. Persons responding to this request should include their name, affiliation, mailing address, phone, fax, e-mail address and sponsoring organization (if any) with the submission. Written submissions will be made available electronically on the NTP's web site as they are received.

An electronic copy of this announcement, internet links to electronic versions of supporting documents for each nomination, and further information on the NTP and the NTP Chemical Nomination and Selection Process can be accessed through the NTP web site: *http://ntp-server.niehs.nih.gov.*

Send comments or information to Dr. Scott A. Masten, Office of Chemical Nomination and Selection, NIEHS/NTP, P. O. Box 12233, MD A3–07, Research Triangle Park, North Carolina 27709; telephone: (919) 541–5710; FAX: (919) 541–3647; email: *masten@niehs.nih.gov.*

Background

The NTP actively seeks to identify and select for study chemicals and other agents for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal open nomination and selection process. Substances considered appropriate for study generally fall into two broad yet overlapping categories: (1) Those substances of greatest concern for public health based on the extent of human exposure and/or suspicion of toxicity; and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, e.g. by facilitating cross-species extrapolation or evaluating dose-response relationships. Input is also solicited regarding the nomination of studies that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of classes of chemical, biological, or physical substances. Substances may be studied to evaluate a variety of health-related effects, including but not limited to reproductive and developmental toxicity, genotoxicity, immunotoxicity, neurotoxicity, metabolism and disposition, and carcinogenicity. In reviewing and selecting nominated substances, the NTP also considers legislative mandates that require responsible private sector commercial organizations to evaluate their products for health and environmental effects. The possible human health consequences of anticipated or known human exposure, however, remain the over-riding factor in the NTP's decision to study a particular substance.

The review and selection of substances nominated for study is a multi-step process. A broad range of concerns are addressed during this process through the participation of representatives from the National Institute of Environmental Health Sciences, other Federal agencies, the NTP Board of Scientific Counselors—an external scientific advisory body, the NTP Executive Committee—the NTP Federal interagency policy body, and the public. This process is described in further detail in a March 2, 2000 **Federal Register** announcement (Volume 65, Number 42, pages 11329–11331). This multi-step evaluative process provides the NTP with direction and guidance to ensure that it's testing program addresses toxicological concerns relative to all areas of public health, and furthermore, that there is balance among the types of substances selected for study (e.g., industrial chemicals, consumer products, therapeutic agents). As such, it should be recognized that at any given time, the new study nominations under consideration do not necessarily reflect the overall balance of substances historically or currently being evaluated by the NTP in it's testing program. For further information on NTP toxicology studies (previous or in progress) visit

the NTP web site at *http://ntp-server.niehs.nih.gov.*

Dated: June 5, 2002.

Samuel Wilson,

Deputy Director, National Toxicology Program.

Attachment

Substances Nominated to the NTP for Toxicological Studies and Recommendations Made by the ICCEC on April 17, 2002

TABLE 1.—SUBSTANCES RECOMMENDED FOR STUDY

Substance [CAS No.]	Nominated by	Nomination rationale; other information	Recommendations for toxicological studies
Abrasive blasting agents; Coal slag; Crushed glass; Garnet; Sand; Specular hematite; Steel grit.	National Institute for Occupational Safety and Health; Occupational Safety and Health Administration.	High production volume and widespread occupational exposure; lack of adequate health effects information; data needed to establish safe exposure limits.	—Chronic inhalation toxicity in male rats; —Pulmonary tissue burden analysis.
5–Amino-o-cresol [2835–95–2]	National Cancer Institute	Widely used in permanent hair dyes; some evidence of toxicity; lack of carcinogenicity data.	—Metabolism; —Developmental and reproductive toxicity; —Carcinogenicity.
tert-Butyl hydroperoxide [75–91–2]	National Cancer Institute	High production volume industrial chemical; evidence for genotoxicity and tumor promotion activity; lack of carcinogenicity data.	—Carcinogenicity; —Consider mechanistic studies related to carcinogenicity of organic peroxides as a class.
Chloramine-T [127–65–1] and p-Toluenesulfonamide [70–55–3].	Private Individual	Investigational new animal drug for antimicrobial use in aquaculture; evidence for toxicity further studies needed to establish safe residue levels.	—*In vitro* and *in vivo* genotoxicity; —Subchronic toxicity; and/or carcinogenicity studies may be considered when results of genotoxicity studies are available for review.
Cobalt metal dust [7440–48–4]	Cobalt Development Institute; International Union, United Auto Workers; Occupational Safety and Health Administration.	Widespread occupational exposure; evidence for toxicity; insufficient data to assess chronic toxicity and carcinogenic potential.	—Toxicological characterization including carcinogenicity and developmental toxicity (inhalation studies).
Ephedrine alkaloid dietary supplements [no CAS No.].	National Cancer Institute; National Institutes of Health Office of Dietary Supplements.	Widely used dietary supplement; reports of adverse effects in consumers; lack of adequate toxicological information for multi-component dietary supplement formulations.	—Developmental and reproductive toxicity; —Subchronic toxicity; —Special emphasis on assessment of potential cardiovascular and central ervous systems effects; —Studies should use commercial ephedra products with and without caffeine and other additives.
Ethanone, 1–(1,2,3,4,5,6,7,8-octahydro-2,3,8,8-tetramethyl-2-naphthalenyl)–(Iso-E Super) [54464–57–2].	Private Individual	High production volume fragrance material; widespread consumer exposure; lack of toxicity data.	—Toxicological characterization including genotoxicity.
Hexafluorosilicic acid [16961–83–4] and Sodium hexafluorosilicate [16893–85–9].	Private Individuals (multiple nominations).	Primary agents used to fluoridate public drinking water systems; lack of toxicity information; assumed complete dissociation to free fluoride under normal conditions of use not supported by experimental evidence.	—Chemical characterization studies to assess chemical fate under aqueous conditions; —Toxicological studies may be considered when results of chemical characterization studies are available for review.
Ketamine hydrochloride [1867–66–9].	U.S. Food and Drug Administration.	Approved drug for anesthetic use in adults; off-label pediatric use thought to occur; causes severe lesions in developing rat brain; further studies needed to assess safety of pediatric use.	—Comprehensive neurotoxicity assessment and toxicokinetics in developing (post-natal) non-human primates.

TABLE 1.—SUBSTANCES RECOMMENDED FOR STUDY—Continued

Substance [CAS No.]	Nominated by	Nomination rationale; other information	Recommendations for toxicological studies
Mercury, ((o-carboxyphenyl)thio)ethyl-,sodium salt (Thimerosal) [54–64–8].	U.S. Food and Drug Administration.	Organomercurial preservative widely used in vaccines and other therapeutics; large exposed population; insufficient toxicity data.	—Toxicokinetics; —Neurodevelopmental toxicity; —Comparative studies with ethylmercury and methylmercury under different dosing regimens in non-human primates; —Coordinate with ongoing federally-sponsored research efforts.
Nitrogen trifluoride [7783–54–2]	National Cancer Institute	Rapidly increasing industrial demand; acute toxic effects well described; potential for toxicity based on oxidizing properties.	—Genotoxicity; —Metabolism.
Sodium metasilicate [6834–92–0] ..	National Institute for Occupational Safety and Health.	Widespread occupational exposure; evidence for biological activity; insufficient toxicity data.	—Subchronic toxicity (inhalation studies); —Respiratory hypersensitivity.
Turpentine [8006–64–2]	International Union, United Auto Workers.	Widespread occupational and consumer exposure; reports of kidney toxicity in exposed humans; insufficient chronic toxicity information.	—Chronic toxicity; —Carcinogenicity.
Welding fume: Gas metal arc welding with stainless steel electrode; Gas metal arc welding with mild steel electrode; Manual arc welding with stainless steel electrode.	National Institute for Occupational Safety and Health; International Union; United Auto Workers.	Widespread Occupational exposure; evidence for toxicity of mixture and components; gaps in available health effects data.	—Acute and subchronic inhalation exposure studies to assess neurotoxicity, immunotoxicity, and pulmonary toxicity of all 3 welding fume types; —Chronic inhalation toxicity and carcinogenicity studies with one or more welding fume types.

TABLE 2.—SUBSTANCES FOR WHICH NO STUDY IS RECOMMENDED AT THIS TIME

Substance [CAS No.]	Nominated by	Nominated for	Nomination rationale; other information	Rationale for recommending no toxicological studies
Hexachloro-1,3-butadiene [87–68–3].	Carcinogen Identification Committee (Advisory Body for California Environmental Protection Agency).	—Carcinogenicity (at doses intermediate to those used in previous studies).	Persistent industrial by-product widely dispersed in environment; some evidence for carcinogenicity; existing data insufficient to characterize carcinogenic hazard.	Low commercial production volume, insufficient evidence of significant human exposure, and availability of adequate toxicological data.
Infrasound [no CAS No.]	National Institute of Environmental Health Sciences.	—Toxicological characterization.	Low frequency sound ubiquitous in occupational and community settings; insufficient settings; insufficient data to address public concerns regarding potential health hazards at low exposure levels.	Insufficient information on human exposures in community settings and questionable utility of additional studies in available animal models/test systems; Consider seeking additional expert opinion on human exposure and toxicity data needs.
Magnesium oxide [1309–48–4].	National Cancer Institute ..	—Biological disposition ..... —Chronic inhalation toxicity.	High production volume industrial chemical; widespread occupational exposure; lack of chronic inhalation toxicity data.	Adequate available toxicological data.
Methylolurea [1000–82–4] ...	National Institute of Environmental Health Sciences.	—Toxicological characterization.	High production volume industrial chemical; widespread use and potential for human exposure; lack of toxicity information.	Inclusion in the High Production Volume Chemical Challenge Program.

TABLE 2.—SUBSTANCES FOR WHICH NO STUDY IS RECOMMENDED AT THIS TIME—Continued

Substance [CAS No.]	Nominated by	Nominated for	Nomination rationale; other information	Rationale for recommending no toxicological studies
4-Methylquinoline [491–35–0].	Carcinogen Identification Committee (Advisory Body for California Environmental Protection Agency).	—Comparative metabolism studies (with quinoline). —Carcinogenicity	Ubiquitous environmental contaminant; some evidence for carcinogenicity; existing data insufficient to characterize carcinogenic hazard.	Low commercial production volume, insufficient evidence of significant human exposure, and availability of adequate toxicological data.

[FR Doc. 02–14821 Filed 6–11–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of The President's New Freedom Commission on Mental Health in June, 2002.

The meeting will be open and will consider how to best accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. It will, among other things, seek to establish issue priorities for the Commission, and will discuss administrative matters, including how to best receive public input on particular areas of interest.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting and a roster of Commission members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: President's New Freedom Commission on Mental Health.

Meeting Date/Time: June 18, 2002, 9:30 a.m. to 4:30 p.m.; June 19, 2002, 8 a.m. to 12 p.m.

Place: Ritz Carlton at Pentagon City, 1250 S. Hayes Street, Salon III, Arlington, Virginia 22202.

Contact: Claire Heffernan, Executive Secretary 5600 Fishers Lane, Parklawn Building, Room 13C–26 Rockville, MD 20857. Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.*

This notice is being published less than 15 days prior to the meeting due to the difficulty in coordinating the scheduling of the Commissioners and the urgent need to begin considering important mental health issues so as to present recommendations to the President in a timely fashion as set out in Executive Order No. 13263 (April 29, 2002).

Dated: June 7, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–14954 Filed 6–11–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement for the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service), in cooperation with the Department of Energy (DOE) and other cooperating agencies, is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement (EIS) for the Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge in Benton, Franklin, Adams, and Grant counties, Washington. The Service is furnishing this notice in compliance with the Service's National Wildlife Refuge planning policy and the National Environmental Policy Act of 1969, as amended (NEPA), and implementing regulations for the following purposes: (1) To advise other agencies, Tribal governments, and the public of our intentions; (2) To obtain comments and information on the issues and alternatives to be addressed in the CCP and EIS; and (3) to describe additional opportunities for public comment during the scoping phase for the CCP and EIS.

DATES: Public comments are requested within 90 days of the date of publication in the **Federal Register**.

ADDRESSES: Address comments and requests for more information to: Greg Hughes, Project Leader, Hanford Reach National Monument, 3250 Port of Benton Blvd., Richland, Washington 99352, Fax (509) 375–0196.

FOR FURTHER INFORMATION CONTACT: Greg Hughes, Project Leader, at (509) 371–1801, Fax (509) 375–0196. Documents referenced herein can be viewed during business hours (7:30 a.m. to 4:30 p.m.) at the address above or at the DOE Public Reading Room located in the Washington State University Tri-Cities Library at 2770 University Drive, Richland, Washington 99352.

SUPPLEMENTARY INFORMATION: The Hanford Reach National Monument (Monument) was designated by Presidential Proclamation 7319 on June 9, 2000. The Monument encompasses approximately 195,000 acres, of which approximately 166,000 acres are currently managed by the U.S. Fish and Wildlife Service (Service) as the Saddle Mountain National Wildlife Refuge under its authority pursuant to the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd–ee), and through agreements with the DOE. The entire Monument is superimposed over a portion of the 375,040-acre DOE Hanford Site, in Richland, Washington. The Washington State Department of Fish and Wildlife (WDFW) administers

800 acres of the Monument through a permit with the DOE. The DOE administers the remaining acreage and currently retains primary ownership or control on all acreage. The Service-managed acreage within the Monument area is part of the National Wildlife Refuge System under permits and agreements with the DOE. By Federal law, all lands within the National Wildlife Refuge System are to be managed in a manner consistent with an approved CCP. The Service is the lead agency for planning and management of the Monument and development of the CCP. Service planning for Monument lands is subject to review and approval by the DOE.

Management Units

The Monument is divided into six administrative units, briefly described below. Of the total 195,000 acres within the Monument, 60,000 acres and 45 miles of the Columbia River are currently open to the public.

Wahluke Unit (Saddle Mountain National Wildlife Refuge)

Located on the east side of the Columbia River, the Wahluke Unit extends from the river north to the Saddle Mountains, encompassing 57,000 acres of riparian and shrub-steppe habitats. Numerous species of native plants are found here, including rare plants such as White Bluffs bladderpod, Geyer's milkvetch, and desert dodder. Near the center of the Wahluke Unit is Wahluke Lake (also known as the WB–10 ponds), formed by water returning to the river from nearby irrigated lands. One of the most scenic parts of the unit is the White Bluffs which form the eastern bank of the Columbia River, for about 20 miles, north of the city of Richland, Washington, near the shared border of Grant and Franklin counties. The Wahluke Unit also includes the White Bluffs Landing, an historic river crossing for local Tribes, and site of the first store and ferry in the Mid-Columbia region. Administered by the Service, the Wahluke Unit is open to the public from two hours before sunrise to two hours after sunset, year round. Current recreational uses include hunting, fishing, hiking, wildlife observation, and photography.

Fitzner/Eberhardt Arid Lands Ecology Reserve Unit (Saddle Mountain National Wildlife Refuge)

This 77,000-acre unit on the southwest side of the Columbia River, is located southwest of State Highway 240 between State Highways 24 and 225, encompassing Rattlesnake Mountain. Rattlesnake Mountain, at 3,600 feet, is the highest landmark in the area and has religious significance for several local Tribes. This unit, as well as the other Monument Units, originally served as a buffer zone for DOE's Hanford Site operations. In 1967, it was set aside by the U.S. Atomic Energy Commission to preserve native shrub-steppe vegetation. The unit has been protected as a National Environmental Research Park since the 1970s. This area contains one of the largest remnants of native shrub-steppe vegetation in Washington. A major wildfire in 2000 devastated native plants, especially sagebrush. The unit is home to a large herd of Rocky Mountain elk. The DOE retains administration of the Rattlesnake Ridge and associated access road, while the Service manages the remainder of this area. Public use in this unit is currently limited to approved environmental education and research activities.

Saddle Mountain Unit (Saddle Mountain National Wildlife Refuge)

Dense stands of sagebrush thrive on the 32,000-acre Saddle Mountain Unit. Located in Grant County, north of the Columbia River, along Highway 24, this unit serves as a wildlife preserve, providing home to many protected bird species, including orioles, kingbirds, warblers, and Brewer's blackbirds. Managed by the Service, since 1971, public use in this unit is currently limited to approved environmental education and research activities.

McGee Ranch/Riverlands Unit

This unit is located on the south side of the Columbia River which forms its northern boundary, and is bordered on the east and south by State Highway 24 to Cold Creek where the western boundary stair-steps north back to the Columbia River. This unit encompasses 9,000 acres. It includes a former pioneer ranch area and rare plants, such as Umtanum buckwheat; which exists nowhere else in the world; Hoover's desert parsley, and Kittitas larkspur. The unit provides a corridor of protected land for wildlife between the Arid Lands Ecology Reserve Unit and the U.S. Army's Yakima Training Center. This unit is managed by the DOE. Public use is allowed in the area between the Midway Road and the Columbia River only.

Vernita Bridge Unit

The WDFW administers approximately 800 acres of the Monument, located along the Columbia River northwest of the Vernita bridge under a DOE permit that predates the Monument designation. The entire unit is open to day use, year round. The primary public use is fishing access.

River Corridor Unit

This unit includes 25,000 acres on the south and west banks of the Columbia River, the Columbia River Islands, and Hanford Dune Field. Sixteen islands exist in this unit, providing habitat for waterfowl, shorebirds, small mammals, and mule deer. Columbia yellowcress, a rare species, grows in the gravelly river shore. The River Corridor Unit is managed by the DOE except for the surface waters of the Columbia River. While access to Hanford Reach surface waters is open year round, the southwest river shore from Vernita Bridge to River Mile 343, and all islands between the Vernita Bridge and the Bonneville Power transmission line crossing at River Mile 351 are closed to public access.

Purposes of the Monument

The purpose for establishment of the Monument is defined in Presidential Proclamation 7319 (2000). The Monument was established to conserve a unique and biologically diverse landscape, encompassing an array of scientific and historic objects. The six units described above functioned historically as protective buffer zones surrounding the Hanford Site. They encompass some of the most pristine shrub-steppe habitat in the Columbia Basin. In addition to the sagebrush/grassland communities, a host of forbes, grasses, wetland and riparian plants and fragile microbiotic soil crusts have been preserved. Several sensitive species and rare plants such as the White Bluffs bladderpod and Umtanum desert buckwheat exist in the Monument. The Monument provides habitat for a wide variety of wildlife, including mule deer, elk, beaver, coyote, waterfowl and upland birds, and raptors as well as migratory and non-migratory fish. In addition to species that reside on the Monument year round, migrating salmon, birds, and hundreds of other native plant and animal species rely on the Monument's natural ecosystem. In addition to its natural and historic resources, the area contains one of the most extensive, intact, American Indian occupation and traditional use areas in the region. The diversity, density, and preservation of these sites is unparalleled in the Pacific Northwest. The Monument also contains historic structures and other remains from more recent human activities, including homesteads from small towns established along the riverbanks in the early 20th century.

Recent Land Use and Resource Planning at the Hanford Site

In 1999, the DOE prepared a 50-year Comprehensive Land Use Plan (CLUP) and EIS, for the Hanford Site. The associated Record of Decision (ROD) designated a preservation land use for the six units described above. The ROD also designated these units to be managed as part of the National Wildlife Refuge System by the U.S. Fish and Wildlife Service.

In accordance with the CLUP, the Service, as a Cooperating Agency, signed its own ROD (November, 1999) that expanded the Saddle Mountain National Wildlife Refuge to include the Wahluke Slope. The ROD also documented the Service's formal adoption of the National Park Service's Hanford Reach Comprehensive River Conservation Study and Final EIS (June, 1994), and DOE's Final Hanford Comprehensive Land-Use Plan and EIS.

The conclusions of previous planning and NEPA documents will be fully considered in the Monument CCP, to the extent that they are consistent with Proclamation 7319. Conflicts will be resolved in accordance with direction of the Proclamation, which provides the overruling purpose of the lands, subject to valid existing rights. As stated in the Proclamation; ''Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national Monument shall be the dominant reservation.'' Additional existing plans, agreements, legal designations, and agency jurisdictions include:

1. DOE Biological Resources Management Plan; 2001;
2. DOE Hanford Cultural Resources Protection Plan; Draft, 2002;
3. National Park Service (NPS) Hanford Reach Comprehensive River Conservation Study and Environmental Impact Statement; June, 1996;
4. Public Law 100–605 (November, 1988); the Hanford Reach Study Act, as amended by Public Law 103–333, Section 404; Hanford Reach Preservation;
5. USFWS Fitzner-Eberhardt Arid Lands Ecology Reserve Preliminary Draft CCP; initiated in 1999 under management agreement with the DOE. When the Monument was designated, this planning effort stopped;
6. WDFW Rattlesnake Hills (Hanford) Elk Strategic Management Plan; February, 2000;
7. Hanford Reach Fire Management Plan and Environmental Assessment; July, 2000;
8. Hanford Reach Protection and Management Program Interim Action Plan; April, 1999;

Other plans will be referenced/considered as the Service proceeds with scoping and detailed planning.

Preliminary Issues, Concerns and Opportunities

The Hanford Reach Federal Advisory Committee (described under separate heading) has held five meetings to organize and become familiar with the Monument and management planning parameters. The committee has identified the following preliminary planning issues as follows:

1. Public Use and Access—What kinds of recreation opportunities should be provided? Is existing access to the lands and waters adequate and appropriate?
2. Resource Protection—How can the biologic, historic, cultural, geologic and paleontologic resources be protected while providing for invasive species control, fire management, vegetation restoration, and public use activities?
3. Valid Existing Rights/Existing Activities—How can existing activities such as power transmission lines, irrigation water canals, and transportation corridors be managed for compatibility with proper care for the Monument's natural and cultural resources?
4. White Bluffs Slumping—To what degree can the adverse natural and cultural impacts from White Bluffs slumping be mitigated?

In this EIS, the Service will describe and evaluate a range of reasonable alternatives, including a No Action alternative and several proposed alternatives, and the anticipated impacts of each.

Overview of Planning Process

By Federal law, all lands within the National Wildlife Refuge System (System) are to be managed in accordance with an approved CCP (16 U.S.C. 668dd–668ee). A CCP must describe the desired future conditions of the refuge and provide long-range guidance and management direction to accomplish the purposes of the refuge, contribute to the mission of the System, and meet other relevant mandates. Additional goals of the CCP process include: (1) Conducting refuge planning in accordance with an ecosystem approach; (2) providing a forum for the public to comment on the type, extent, and compatibility of wildlife-dependent and other uses within the refuge area; (3) ensuring public involvement in refuge management decisions by providing a process for effective coordination, interaction, and cooperation with affected parties; (4) utilizing the best available science and sound professional judgement; and (5) ensuring that the six priority uses (hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation) receive priority consideration during CCP preparation. Some of the topics to be addressed in the CCP include: Wildlife and habitat management, habitat restoration, and public use.

During development of the CCP, we will comply with the provisions of NEPA through concurrent preparation of an Environmental Impact Statement (EIS) that will accompany the CCP. The draft EIS will contain a No Action alternative, a proposed action alternative, and potentially other alternatives. The alternatives will be used to define management options and compare their effects. The potential environmental impacts of each alternative will be analyzed in the draft EIS. Following completion of the final CCP/EIS document, and the finalization of the ROD, the product of the planning process will be a stand-alone CCP, separate from the EIS.

As part of the CCP process, written compatibility determinations will be prepared for all uses of the Monument. Uses to be considered will include all recreational uses (including Monument facilities associated with a recreational use or other general public use), Monument management economic activities, and other uses of the Monument by the public or other agencies. The Service will determine that a proposed or existing wildlife-dependent use or any other use of the Monument is compatible if the use will not materially interfere with or detract from the fulfillment of the mission of the System or the purpose of the Monument. Incompatible uses will not be permitted to occur on the Monument.

Review of the CCP and EIS will be conducted in accordance with the requirements of the National Wildlife Refuge Administration Act, as amended (16 U.S.C. 668dd–668ee), NEPA (42 U.S.C. 4321 et seq.), Federal regulations for implementing NEPA (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

The Monument CCP/EIS will provide guidance and management direction for the Service for the next 15 years. Our CCP planning process can be reviewed by visiting our website at *http://pacific.fws.gov/planning/*. We will use this website to provide pertinent information about the Monument and to keep the public informed about the status of the CCP/EIS.

Agency and Public Involvement

The Monument is located in a highly complex planning environment associated with a nuclear superfund site, Bonneville Power Administration transmission grid, Bureau of Reclamation Columbia Basin Irrigation project and associated infrastructure, the Energy Northwest Nuclear Power Generating Station, nationally significant natural, historic, and cultural resources, Tribal trust responsibilities, and diverse public interest groups. The wide-range of potential issues to consider in the CCP/EIS will require the Service and DOE to involve an equally wide range of potentially affected interests in the planning process. We intend to involve the public and other agencies in the planning process through the following mechanisms.

Federal Planning Advisory Committee

The Service recognizes that the planning process is best conducted by seeking the advice of Tribal, local and regional agencies, and private sector entities associated with the Monument. The Secretary, of the U.S. Department of the Interior, directed the Service to form a Federal Advisory Committee to advise the Service and DOE on the preparation of the CCP. The 13-member Hanford Reach National Monument Federal Planning Advisory Committee (Committee) is chartered to ensure that the CCP considers the land-use visions and perspectives of affected stakeholders, within the framework of the Presidential Proclamation 7319 and policy requirements of the Service and DOE. Committee members represent a cross-section of stakeholders, including state, city, county, tribal, education, scientific, conservation, economic development, outdoor recreation, and ''public-at-large'' representation. The Service and DOE are committed to serious consideration of all recommendations and advice from the Committee throughout the planning process.

Committee meetings were held June 14 and 15, 2001; September 12 and 13, 2001; October 25, 2001; February 6, 2002; March 19, 2002; May 2, 2002; and May 29, 2002. The Committee is chartered for 2 years; however, the charter can be renewed for another 2-year period to complete the Monument CCP/EIS. Meetings are open to the public, and a public comment period is provided during each meeting. Meeting minutes are recorded and can be accessed at the Department of Energy's Public Reading Room, Mail Stop H2–53, Richland, Washington, 99352. The general electronic mail address is <*doe.reading.room@pnl.gov*>.

Cooperating Agencies

Agencies with jurisdiction by law or special expertise on environmental issues that should be addressed in the CCP/EIS will be invited to participate in the planning process as a Cooperating Agency, as defined by the Council on Environmental Quality's (CEQ) regulations for implementing the NEPA, 40 CFR 1508.5. Cooperating Agencies will participate in the scoping process to identify significant planning issues and to help develop the EIS purpose and need statement. With direction from the Service, they will also develop pertinent information and prepare environmental analyses based on their expertise and area of jurisdiction. Consistent with applicable Federal law and policy, and our responsibilities as lead agency, we will fully consider the data, environmental analyses, and action alternatives provided by Cooperating Agencies.

Public Involvement

We will use news releases to the local and regional media and other appropriate means to notify the public of opportunities to participate in the planning process. Planning updates will be mailed out to potentially affected interests and to those entities requesting to be on the planning project mailing list. To add individuals or groups to the mailing list, please submit a name and mailing address to the U.S. Fish and Wildlife Service at 3250 Port of Benton Blvd., Richland, Washington 99352, or call (509) 371–1801. Public scoping meetings and workshops will be held at locations and times to be specified. The public will also be provided the opportunity to submit verbal or written comments at regularly scheduled meetings of the Monument Federal Planning Advisory Committee. All Advisory Committee meetings will be announced in the **Federal Register** and public workshops will be announced through local media.

Involvement of Tribes

In recognition of the sovereign status of American Indian Governments, the Service will establish and maintain government-to-government relationships with American Indian Tribal governments while developing the CCP/EIS. We will consider actions that may affect American Indian cultural or religious interests. To the extent that Indian Tribes have rights pursuant to the Treaties of 1855 (12 Stat. 951), or any other Federal law, those rights will be properly recognized and addressed in the planning and decision-making process. We will observe legislative mandates, agency policies supporting trust responsibilities, and respect American Indian cultural values when planning for the Monument's future. We will take appropriate precautions to ensure that locations of protected sites remain confidential.

Wilderness Review

We are required by Service policy to complete a wilderness review of Service managed lands to determine if any lands are suitable for inclusion in the National Wilderness Preservation System. The wilderness review will be integrated into the CCP/EIS process including identifying areas that meet the minimum wilderness criteria; evaluating the wilderness suitability of alternatives; and documenting recommendations. Wilderness designation requires Congressional legislation. The last step if appropriate, would consist of forwarding any suitable recommendations from the Director of the Service, through the DOI Secretary and the President, to Congress in a Wilderness Study Report. If lands where the DOE retains primary jurisdiction are found suitable for wilderness designation, DOE concurrence would be required prior to any recommendations being forwarded to Congress.

Wild and Scenic River Proposed Designation

In 1996, the DOI issued a Record of Decision recommending ''Recreational River'' designation, as defined by the National Wild and Scenic Rivers Act of 1968, for the Hanford Reach of the Columbia River and a quarter-mile corridor on either side of the river. A final designation requires Congressional legislation. Congress has not acted upon this recommendation, and the river has been placed into indefinite protection status. Following designation of the Monument, the DOI Secretary transferred oversight responsibility for the Hanford Reach interim protection from the National Park Service to the Fish and Wildlife Service. Until Congress acts on the proposed designation, we will continue to oversee the protection of the proposed ''Recreational River'' in such a manner as to protect and enhance the values which caused it to be recommended for inclusion in the National Wild and Scenic Rivers System, to the extent that our jurisdiction will allow.

Refuge Roads Program

In October 1998, Congress passed the Transportation Equity Act for the 21st

Century, or TEA–21, which established the Refuge Roads Program. TEA–21 requires that all projects funded under the Refuge Roads Program be consistent with agency management plans. The Monument CCP and EIS will address transportation issues to determine current and future transportation needs such as the maintenance or improvement of existing roads, closure and revegetation of existing roads and the construction of new roads, parking lots, comfort stations, signs, or pedestrian trails. Construction of new roads and parking lots can not be funded by the Refuge Roads Program. The plan will explain how the public is going to access Service administered lands and waters within the Monument.

Conclusion

With the publication of this notice, the public is encouraged to help identify potential issues, management actions and concerns; significant problems or impacts; and opportunities or alternatives to resolve them. The public scoping period will continue for 90 days from the date of this notice, however, the Service will accept comments throughout the planning process. The public may provide the Service with written comments at either the mailing address or planning website listed in this notice. Comments may also be provided at scheduled meetings of the Hanford Reach National Monument Federal Advisory Committee. The dates and location of Committee meetings will be published in the **Federal Register** and announced through local media and other appropriate means. All comments and written materials submitted to the Committee will be documented and provided to the Service for their consideration.

All comments received on environmental documents become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, CEQ and NEPA regulations (40 CFR 1506.6(f)), and other Service and DOE policy and procedures. When requested, the Service generally will provide comment letters with the authors' names and addresses. However, the telephone number of the commenting individual will be withheld in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the author's name, address, or other identifying information.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), NEPA implementing regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: June 4, 2002.

William F. Shake,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–14694 Filed 6–11–02; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the 2001 ATPA report.

EFFECTIVE DATE: June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

This report is being prepared under section 332(g) of the Tariff Act of 1930 following receipt of a request on May 22, 2002, from the Committee on Ways and Means of the United States House of Representatives. Previous reports in this series were provided pursuant to section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204). The Committee noted that the Commission's authority to prepare such reports under section 206 expired on December 4, 2001, and requested continuation of the report series for 2001 in light of the current legislative uncertainty regarding ATPA renewal.

As requested by the Committee, the Commission's 2001 report will be similar in scope to that of previous reports in the series, and will analyze the economic impact of ATPA on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of ATPA in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. The report will include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on domestic industries affected by the Act; and

(3) The estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

Notice of institution of the investigation and the schedule for such reports under section 206 of ATPA was published in the **Federal Register** of March 10, 1994 (59 FR 11308). As requested by the Committee, the Commission's report covering calendar year 2001 will be submitted by September 30, 2002.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the preparation of this eighth report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. The Committee on Ways and Means has asked that the Commission transmit and publish a public report; accordingly, the Commission will not include confidential business information in its report. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than July 2, 2002.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: June 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–14693 Filed 6–11–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–018]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

Time and Date: June 20, 2002 at 11:00 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters To Be Considered:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–943 (Final)(Circular Welded Non-Alloy Steel Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 28, 2002.)
5. Inv. No. 731–TA–948 (Final) (Individually Quick Frozen Red Raspberries from Chile)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 28, 2002.)
6. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 10, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–14942 Filed 6–10–02; 12:20 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,495 and NAFTA–05581]

G & L Service Company, North America (USA), Incorporated, Eagle Pass, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 4, 2002, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) under petition TA–W–40,495 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) under petition NAFTA–5581. The TAA denial notice applicable to workers of G & L Service Company, North America (USA), Incorporated, Eagle Pass, Texas was signed on March 8, 2002 and published in the **Federal Register** on March 29, 2002 (67 FR 15226). The NAFTA–TAA denial notice applicable to workers of G & L Service Company, North America (USA), Incorporated, Eagle Pass, Texas, was signed on March 8, 2002 and published in the **Federal Register** on March 29, 2002 (67 FR 15227).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at G & L Service Company, North America (USA), Incorporated, Eagle Pass, Texas were engaged in providing support services to a manufacturing facility located in Mexico. There was no separation of workers manufacturing a product at a corporately-affiliated domestic facility. Sales increased in 2000 compared to 1999 and in January–September 2001 compared to the same period in 2000.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. The workers of the subject firm provided services to a manufacturing facility of their parent company located in Mexico. Increased company imports from Mexico did not cause separations of workers at the subject firm, however, production of men's and women's slacks at the Mexican facility contributed to employment at the subject facility.

The petitioners allege that production at the subject firm declined during the relevant period of the investigation. The petitioners further state that they believe all criteria at the subject firm have been met and therefore they should qualify for Trade Adjustment Assistance and NAFTA-Transitional Adjustment Assistance.

The Department reviewed the data supplied by the company during the initial investigation and requested clarification from the company concerning the functions performed at the subject firm. Based on further information provided by the company, it has become evident that the workers were not engaged in production of an article, men's and women's pants and shorts. Workers instead, only performed administrative services at the subject facility during the 2000 and 2001 period. The workers provided services in support of a foreign affiliated plant that produced a product.

The subject workers do not produce an article within the meaning of section 222(3) of the Act (TAA) and section 250 of the Trade Act of 1974 (NAFTA–TAA).

The petitioners also allege that a portion of their work was performed in Mexico.

Subject plant worker functions performed outside the subject plant location are not relevant. The Department conducts TAA and NAFTA–TAA investigations for specified locations that are indicated on the TAA and/or NAFTA–TAA petition. Regardless, the work performed by the workers was not producing an article.

The new information provided by the petitioner, which while perhaps altering the basis for the prior decisions, does not provide a basis to change the prior decisions.

Conclusion

After review of the application and investigative findings, I conclude that there has been no misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14787 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—06051]

Mac Specialties Ltd, Oceanside, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 11, 2002, in response to a petition filed by a company official on behalf of workers at Mac Specialties Ltd, Oceanside, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–14795 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,086]

Abbott Laboratories, Laurinburg, NC; Notice of Revised Determination on Reconsideration

By application of May 1, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination, based on the finding that imports of medical equipment (IV units, surgical kits, trays etc.) did not contribute importantly to worker separations at the subject plant. The denial notice was signed on April 11, 2002 and published in the **Federal Register** on April 24, 2002 (67 FR 20166).

The company requested reconsideration based on a misunderstanding of the ''Business Confidential Data Request Form'' they supplied the Department of Labor. The company failed to supply quantities and timing of products that are being imported back to the United States.

A review of import data supplied by the company on administrative reconsideration shows that the company began importing medical equipment ''like or directly competitive'' with products produced at the subject plant during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of medical equipment, contributed importantly to the decline in production and to the total or partial separation of workers at Abbott Laboratories, Laurinburg, North Carolina. In accordance with the provisions of the Act, I make the following revised determination:

''All workers of Abbott Laboratories, Laurinburg, North Carolina, who became totally or partially separated from employment on or after February 18, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 31st day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14799 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,256]

Lucent Technologies (Now Known as Celestica), Columbus Works, Columbus, OH; Notice of Revised Determination on Reconsideration

By letter of February 28, 2002, the International Brotherhood of Electrical Workers, Local 2020 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on January 31, 2002, based on the finding that imports of circuit packs did not contribute importantly to worker separations at Lucent Technologies, (now known as Celestica), Columbus Works, Columbus, Ohio. The denial notice was published in the **Federal Register** on February 13, 2002 (67 FR 6748).

The petitioner on reconsideration alleged that the company shifted production of circuit packs to Canada and China and began importing the products back to the United States during the relevant period.

A review of data supplied in the initial investigation and further clarification obtained from the company shows that a major portion of production at the subject firm was transferred to foreign sources and that greater than half of that production was imported back to the United States during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Lucent Technologies, (now known as Celestica), Columbus Works, Columbus, Ohio, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Lucent Technologies, (now known as Celestica), Columbus Works, Columbus, Ohio, who became totally or partially separated from employment on or after October 10, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14797 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,419]

Flextronics International, Porstmouth, NH; Notice of Negative Determination Regarding Application for Reconsideration

By application received on May 1, 2002, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to

workers of Flextronics International, Portsmouth, New Hampshire was issued on April 2, 2002, and was published in the **Federal Register** on April 17, 2002 (67 FR 18923).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (2) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. Plant sales and production of networking products PCBA and chassis assemblies increased from 2000 to 2001.

The request for reconsideration alleges that sales and production at the subject plant declined during the latter part of 2001. The petitioner attached various news articles to attempt to illustrate declines in sales and production during the relevant period.

The company reported increased sales and production at the subject plant in 2001 over the corresponding 2000 period. Further review of the initial investigation shows that the preponderance in the declines in employment at Flextronics International, Portsmouth, New Hampshire is the direct result of plant production being shifted to a foreign source during the latter part of 2001 and those products are not being imported back to the United States during the relevant period. Thus on further analysis criterion (3) group eligibility requirements of section 222 of the Trade Act of 1974 also was not met. Imports did not contribute importantly to the subject plant layoffs.

The petitioner further states that the company turned down work because of it being too labor intensive, the company is restructuring their operations in the United States, Western Europe and Asia and that production will be moved to lower-cost regions such as Mexico. None of these factors are a basis for certifying the worker group at Flextronics International, Portsmouth, New Hampshire.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14786 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,610]

The Goodyear Tire & Rubber Company, East Gadsen, AL; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 3, 2002, the United Steelworkers of America, AFL–CIO, CLC, Local Union No. 12L requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 4, 2002 and published in the **Federal Register** on March 20, 2002 (67 FR 13010).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Goodyear Tire & Rubber Company, East Gadsden, Alabama engaged in the production of passenger radial tires and light truck tires, was denied because criteria (2) was not met. Production of passenger radial tires and light truck tires at the subject plant increased from 2000 to 2001.

The request for reconsideration alleges that company wide sales of tires declined during the relevant period. The petitioner attached various news articles to illustrate declines in company sales during the relevant period.

An examination of Goodyear Tire and Rubber's *2001 Annual Report* shows that the company's tire sales declined during the 2001 period over the corresponding 2000 period. Further examination of the *2001 Annual Report* shows that the preponderance in the declines in company tire sales is related to lost business in foreign countries, rather than lost do mestic tire sales.

A further review of aggregate U.S. imports of radial tires shows that imports declined in the year 2001 compared to 2000. Also, the company did not import articles like or directly competitive with articles produced at the subject firm.

Thus, on further analysis, criterion (3) group eligibility requirements of section 222 of the Trade Act of 1974 also was not met. Imports of radial tires did not contribute importantly to the subject plants layoffs. Analysis of information provided indicates that any fluctuation in corporate wide sales appears related to a global slowdown, rather than imports impacting the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of June, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14788 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,572]

Northeast Bleach and Dye, Inc., Schuylkill Haven, PA; Notice of Revised Determination on Reconsideration

By letter of April 15, 2002, the company, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 18, 2002, based on the finding that imports of dyed yarn and fabric did not

contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on March 29, 2002 (67 FR 15225).

To support the request for reconsideration, the company indicated that an affiliated facility (Tiffany Knits, Inc., Schuylkill Haven, Pennsylvania) located at the same location as the subject plant, was certified on May 13, 2002 for TAA under TA-W–40,603. The applicant further stated that the subject plant was in direct support of that facility and had the same customer base.

A review of the allegation and additional information provided by the company shows that the subject firm dyed circular knit fabrics (finished) for a TAA certified affiliated facility (Tiffany Knits, Inc., Schuylkill, Pennsylvania) and shipped the dyed circular knitting fabric to the customers. The two companies were owned and operated by the same owner, and served the same customer base. A review of the survey conducted for Tiffany Knits, Inc. shows that a major customer increased their imports of finished circular knit fabric during the relevant period, thus impacting the workers of the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Northeast Bleach and Dye, Inc., Schuylkill Haven, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Northeast Bleach and Dye, Inc., Schuylkill Haven, Pennsylvania, who became totally or partially separated from employment on or after November 13, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14798 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40, 216]

Paul Flagg Leather Company, Sheboygan, WI; Notice of Revised Determination on Reconsideration

By application of May 1, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination, based on the finding that imports of tanned cowhides (leather) did not contribute importantly to worker separations at the subject plant. The denial notice was signed on April 12, 2002 and published in the **Federal Register** on May 2, 2002 (67 FR 22114).

The company requested reconsideration based on various factors relevant and not relevant to meeting the eligibility requirement under TAA. However, further review of the Department of Labor's survey conducted during the initial investigation shows that a major customer increased their imports of tanned cowhides, while decreasing their purchases from the subject firm during the relevant period.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of tanned cowhides, contributed importantly to the decline in production and to the total or partial separation of workers at Paul Flagg Leather Company, Sheboygan, Wisconsin. In accordance with the provisions of the Act, I make the following revised determination:

''All workers of Paul Flagg Leather Company, Sheboygan, Wisconsin, who became totally or partially separated from employment on or after October 3, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 31st day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14796 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,185]

Pittsburgh Logistics Systems, A Subsidiary of Quadrivius, Inc., on Location at LTV Steel Corp., Independence, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 29, 2002, the petitioners, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 29, 2002 and published in the **Federal Register** on April 17, 2002 (67 FR 18923).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Pittsburgh Logistics Systems, Independence, Ohio engaged in employment related to the management of warehousing and distribution services, was denied because the workers did not produce an article as required for certification under section 222 of the Trade Act of 1974.

The petitioners indicate that their jobs were eliminated due to lack of work caused by an LTV Steel Co., Inc., shutdown. They further state that they believe the closure of LTV Steel Co. is attributed to imports of steel.

The closure of the LTV Steel Company, Inc. is not relevant since the subject workers do not produce an article within the meaning of section 222(3) of the Act. The subject workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm otherwise related to the subject firm by control. Additionally, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory

criteria for certification and the reduction must directly relate to the product impacted by imports.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14790 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,906]

Quark, Inc., Denver, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application dated on April 11, 2002, a worker of the subject firm requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Quark, Inc. Denver, Colorado was signed on April 4, 2002, and published in the **Federal Register** on April 17, 2002 (67 FR 18923).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Quark, Inc. Denver, Colorado engaged in activities related to software development. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

In the request for reconsideration, a worker of Quark, Inc. Denver, Colorado alleged that Quark, Inc. Denver, Colorado shifted their operation to India.

The initial investigation revealed that the workers were engaged in activities related to the development of software. The workers at the subject firm do not produce an article within the meaning of section 222(3) of the Trade Act 1974. In any event, a transfer of a firm's operations to a foreign source is not a relevant factor in meeting the eligibility requirements under the Trade Act of 1974. Imports of a product produced by the subject firm must ''contribute importantly'' to the layoffs at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14789 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,213]

VF Playwear, Inc., Corporate Headquarters, Greensboro, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 2002 in response to a petition that was filed by a company official on behalf of workers at VF Playwear, Inc., Corporate Headquarters, Greensboro, North Carolina.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,884, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of April, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–14791 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—5984]

Mansfield Plumbing Products, LLC, Kilgore, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 12, 2002, in response to a petition filed on behalf of workers at Mansfield Plumbing Products, LLC, Kilgore, Texas.

The petition has been deemed invalid since one of the three petitioners was separated from the subject firm more than one year prior to the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–14793 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5990]

Optek Technology, Inc., Carrollton, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 11, 2002, in response to a petition filed by a company official on behalf of workers at Optek Technology, Inc., Carrollton, Texas.

The petitioning worker group is covered under an existing certification, NAFTA–5803. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–14794 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5832]

Pittsburgh Annealing Box Company, LLC, Pittsburgh, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 16, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 25, 2002, and was published in the **Federal Register** on April 5, 2002 (67 FR 16442).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of annealing inner covers at Pittsburgh Annealing Box Company, LLC, Pittsburgh, Pennsylvania, was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of annealing inner covers from Mexico or Canada, nor did the subject firm shift production from Pittsburgh, Pennsylvania to Mexico or Canada. The survey conducted by the Department of Labor revealed no increase in customers' purchases of annealing inner covers from Canada or Mexico during the period of sales declines at the subject plant.

The petitioner alleges that increased imports of semi-processed steel from Mexico adversely affected the business of their customers. The petitioner further states that these imports have displaced tonnage that the subject firm's customers would have produced and thus reduced the need for the product produced by the subject plant (annealing inner covers).

Semi-processed steel imports into the United States are not relevant to the TAA petition that was filed on behalf of workers producing annealing inner covers. The product imported must be ''like or directly'' competitive with what the subject plant produced and the imports must ''contribute importantly'' to the layoffs at the subject plant to meet the eligibility requirements for adjustment assistance under section 250(a) of the Trade Act of 1974, as amended. Further examination of the facts developed in the initial investigation show that company imports and customer imports of annealing inner covers did not ''contribute importantly'' to the layoffs at the subject plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 30th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–14792 Filed 6–11–02; 8:45 am]

BILLING CODE 4510–30–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 July 29, 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 301–837–3698 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) 837–3635. 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–02–17, 75 items, 75 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to intelligence activities, weather observations, operations support, manpower and organizational matters, and legal programs and activities as well as electronic records that relate to such matters and that supplement or replace paper records already approved for disposal. Records relate to such subjects as proposals for the collection of intelligence, the preparation of intelligence estimates, surface and upper air observations, weather reconnaissance, strategic trade control, productivity enhancement, financial programs, and the administration of military justice.

2. Department of the Air Force, Agency-wide (N1–AFU–02–18, 75 items, 75 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to research and development, standardization of equipment, criminal investigations, and safety as well as electronic records that supplement or replace paper records relating to these matters that were previously approved for disposal. Records pertain to such subjects as research and development planning and projects, testing of aircraft and equipment, equipment specifications, aircraft nomenclature, counterintelligence operations, informants, polygraph examinations, security investigations of personnel, personnel credentials, personnel safety, nuclear weapons safety, nuclear reactors, flying violations, and aircraft accidents.

3. Department of Commerce, Economics and Statistics Administration (N1–40–01–4, 27 items, 22 temporary items). Records of the immediate office of the Under Secretary and the Deputy Under Secretary for Economic Affairs, including such records as correspondence files, extra copies of publications, working papers, procurement survey data, and electronic copies of records created using electronic mail and word processing. Also included are electronic records associated with the STAT-USA Internet Database, including such records as input data provided by other Federal agencies, the superseded data file and system library copy, system backups, and copies of monthly CD-ROM products. Proposed for permanent retention are recordkeeping copies of such files as publications and briefing books, and speeches. Also proposed for permanent retention are the STAT-USA master data file, which contains statistics and other information pertaining to trade, manufacturing, and other economic activities, as well as system documentation and STAT-USA annual summary disks.

4. Department of Defense, Defense Intelligence Agency (N1–373–02–3, 1 item, 1 temporary item). Paper copies of Iraqi documents captured during Operation Desert Storm. These records, which are contaminated by mold, have been scanned. Scanned images will be appraised and scheduled separately.

5. Department of Defense, Defense Threat Reduction Agency (N1–374–02–3, 3 items, 3 temporary items). Electronic systems and related outputs that pertain to administrative aspects of treaty inspection missions and operations, such as training, mission scheduling, and the acquisition of passports.

6. Department of Justice, Office of the Attorney General (N1–60–02–5, 10 items, 2 temporary items). Electronic mail and word processing records accumulated by the Commission for the Review of Federal Bureau of Investigation Security Programs. Recordkeeping copies of the commission's records are proposed for permanent retention, including interviews, document request correspondence, minutes and transcripts of meetings, FBI debriefings of Robert Phillip Hanssen, transcripts of commission interviews with Hanssen, and correspondence files of the Commission Director and Counsel.

7. Department of Justice, Federal Bureau of Investigation (N1–65–02–4, 1 item, 1 temporary item). Fingerprint cards and related records generated in the course of background investigations of military enlistees and applicants for Federal Government employment.

8. Department of Justice, Drug Enforcement Administration (N1–170–02–3, 4 items, 2 temporary items). Inputs and outputs for an electronic system relating to investigative cases. The electronic data is proposed for permanent retention along with the related system documentation.

9. Department of the Treasury, Office of the Secretary (N1–56–02–3, 29 items, 24 temporary items). Files accumulated in the Office of the Secretary, including such records as electronic tracking systems for correspondence, telephone logs, invitations, and trip files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of calendars and daily schedules, official correspondence, briefing books, and daybooks of the Secretary and the Deputy Secretary.

10. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–01–8, 3 items, 2 temporary items). Records relating to the testing of chemicals in accordance with rules published under Section 4 of the Toxic Substance Control Act that have been microfilmed. Also included are electronic copies of documents created using electronic mail and word processing. Microfilm copies of records as well as paper records that have not been filmed are proposed for permanent retention.

11. National Archives and Records Administration, Modern Records Programs (N2–441–02–1, 1 item, 1 temporary item). Higher Education Civil Rights Surveys accumulated by the Department of Education in 1976 and 1978 that are in the National Archives. The data in these records has been incorporated into Higher Education General Information Survey electronic files held by the National Archives.

12. Office of Navajo and Hopi Indian Relocation, Relocation Operations Division (N1–220–02–1, 32 items, 26 temporary items). Records of the Relocations Operations Division, including such records as potential applicant case files, land appraisal records relating to land for which no property owner could be located, chronological files, subject files, project working files, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as client case files, Joint Use Area rosters and reports, and appraisal case files.

13. Office of Navajo and Hopi Indian Relocation, Executive Direction Division (N1–220–02–2, 9 items, 6 temporary items). Electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files of the commissioner and executive director, including meeting files, subject files, and research and planning files.

14. Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–3, 6 items, 5 temporary items). Working files and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of procedural directives and other documents pertaining to policies and procedures.

15. Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–4, 6 items, 6 temporary items). Project files for such activities as building construction and subdivision development, radiation safety program files created to document the use of radiation for the testing of soil compaction for the development of roads, and electronic copies of documents created using electronic mail and word processing. Documentation concerning projects is proposed for permanent retention in schedules for other offices of this agency.

16. Office of Navajo and Hopi Indian Relocation, Legal Department (N1–220–02–5, 17 items, 16 temporary items). Litigation and attorney working files, conservatorship and probate working files, annual reports of eligibility where a consolidated report has been identified as permanent, attorney program files, audio tapes of transcribed client eligibility appeal hearings, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of legal opinions are proposed for permanent retention. Documentation concerning legal matters is also available in client case files accumulated by the Relocation Operations Division, which also are proposed for permanent retention.

17. Office of Navajo and Hopi Indian Relocation, New Lands Division (N1–220–02–6, 19 items, 14 temporary items). Working files of homesite leases, New Lands Chapter projects working files, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of New Lands project files, range management files, cultural resources management files, and maps and indexes to maps.

18. Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–7, 9 items, 3 temporary items). Reference copies of maps and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of reports, publications, studies, maps, charts, and planning records for the development of New Lands.

19. Office of Navajo and Hopi Indian Relocation, Administrative Services Division (N1–220–02–14, 4 items, 3 temporary items). Client vendor files and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of New Lands program operations vendor case files are proposed for permanent retention.

Dated: June 6, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–14733 Filed 6–11–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee (IARPC).

Date and Time: Monday, July 8, 2002, 2–3:30 p.m.

Place: National Science Foundation, Room 1235, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed. The meeting is closed to the public because future fiscal year budget and policy issues will be discussed.

Contact Person: Charles E. Myers, Office of Polar Programs, Room 755, National Science Foundation, Arlington, VA 22230, Telephone: (703) 292–7434.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98–373, the Arctic Research and Policy Act, to help set priorities for future arctic research, assist in the development of a national arctic research policy, prepare a multi-agency budget and Plan for arctic research, and simplify coordination of arctic research.

Proposed Meeting Agenda Items:

1. U.S. Arctic Policy Review.
2. Report of the Arctic Research Commission.
3. IARPC Program Initiative—Bering Sea Research.
4. Implementation of Program Initiatives in FY 2003–2007.

Charles E. Myers,

Head, Interagency Arctic Staff, Office of Polar Programs.

[FR Doc. 02–14732 Filed 6–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

License No. NPF–3: Firstenergy Nuclear Operating Company, Davis-Besse Nuclear Power Station, Unit 1; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated April 24, 2002, David Lochbaum (petitioner) has requested on behalf of multiple organizations that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to FirstEnergy Nuclear Operating Company, the owner of the Davis-Besse Nuclear Power Station. Specifically, the petitioners request that the NRC issue an order to FirstEnergy, requiring a verification by an independent party (VIP) for issues related to the reactor vessel head problem at Davis-Besse, Unit 1.

As the basis for this request, the petitioner states that the order issued by the NRC on August 14, 1996, to Northeast Nuclear Energy Company, the owner of the Millstone Nuclear Power Station in Connecticut, is a recent and relevant precedent for the action requested by the petitioners.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR). As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioners addressed the NRR Petition Review Board (PRB) on May 9, 2002, to discuss the petition. The results of that discussion were transcribed, considered in the PRB's determination regarding the petitioners' request and in establishing the schedule for the review of the petition, and are treated as a supplement to the petition. A copy of the petition and the supplements

(Accession Numbers ML021260444 and ML021490065, respectively) are available for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. A copy of FirstEnergy's response dated May 16, 2002, to the petition is also publicly available under Accession Number ML021410451. Publicly available records will be accessible from the NRC's 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's PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of June, 2002.

For the Nuclear Regulatory Commission

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–14741 Filed 6–11–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25605; File No. 812–12734]

Ameritas Variable Life Insurance Company, et al.

June 5, 2002.

AGENCY: The Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''Act'' or ''1940 Act'') granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture, under specified circumstances, of certain credits applied to purchase payments made under certain variable annuity contracts (the ''Application'').

APPLICANTS: Ameritas Variable Life Insurance Company (''Ameritas''), First Ameritas Life Insurance Corp. of New York (''First Ameritas'') (Ameritas and First Ameritas shall collectively be referred to as ''Ameritas/First Ameritas''), Ameritas Variable Life Insurance Company Separate Account VA–2 (the ''Ameritas Separate Account''), First Ameritas Variable Annuity Separate Account (the ''First Ameritas Separate Account,'' collectively with the Ameritas Separate Account, the ''Separate Accounts''), and Ameritas Investment Corp. (''AIC'' or ''BROKER'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order to permit the recapture, under specified circumstances, of certain credits applied to purchase payments made under certain variable annuity contracts issued by the Separate Accounts (the ''Contracts''), as well as other variable annuity contracts that Ameritas/First Ameritas may issue in the future through existing or future separate accounts (''Other Accounts'') that are substantially similar in all material respects to the Contracts (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with, Ameritas/First Ameritas whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (''Affiliated Broker-Dealers'').

FILING DATE: The Application was filed on December 19, 2001, amended and restated on April 1, 2002, and May 8, 2002, and amended on June 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 28, 2002, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Ameritas Variable Life Insurance Company, 5900 O Street, Lincoln, NE 68510, Attn: Gregory C. Sernett, Esq.; copies to W. Randolph Thompson, Jorden Burt LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–5208.

FOR FURTHER INFORMATION CONTACT: Zandra Bailes, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Ameritas is a stock life insurance company organized under the insurance laws of Nebraska in 1983. Ameritas is an indirect majority-owned subsidiary of Ameritas Acacia Mutual Holding Company, the ultimate parent company of Ameritas Life Insurance Corp. (''Ameritas Life''), Nebraska's first insurance company—in business since 1887, and Acacia Life Insurance Company, a District of Columbia domiciled company chartered by an Act of the United States Congress in 1869. In 1996, Ameritas Life Insurance Corp. entered into a joint venture with AmerUs Life Insurance Company (a merger of Central Life Assurance Company founded in 1896 and American Mutual Life Insurance Company founded in 1897). Both Ameritas Life and AmerUs now guarantee the obligations of Ameritas through an agreement forming AMAL Corporation, a holding company that owns the common stock of Ameritas.

2. First Ameritas is a stock life insurance company organized under the insurance laws of New York in 1993. First Ameritas is a wholly owned subsidiary of Ameritas Life.

3. The Ameritas Separate Account was established as a separate asset account of Ameritas under Nebraska law on May 28, 1987. The First Ameritas Separate Account was established as a separate investment account of First Ameritas under New York law on March 21, 2000. The Separate Accounts were established for the purpose of funding variable annuity contracts. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts, are, in accordance with the respective Separate Accounts' contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Ameritas or First Ameritas, respectively. The Separate Accounts are registered with the Commission as unit investment trusts under the 1940 Act.

4. AIC is the principal underwriter of the Contracts. AIC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act'') and is a member of the NASD. The Contracts are sold by

licensed insurance agents (where the Contracts may be lawfully sold) who are registered representatives of broker-dealers which are registered under the 1934 Act and are members of the NASD. AIC enters into selling group agreements with affiliated and unaffiliated broker-dealers. AIC is a wholly-owned subsidiary of AMAL Corporation and an affiliate of Ameritas and First Ameritas.

5. The Contracts may be purchased with an initial premium payment of $25,000. Subsequent premium payments of at least $1,000 ($50 per month if through electronic funds transfer) may also be made. The Contracts may assess annual contract fees, currently $0; contract fees are waived if the contract value is at least $50,000. The Medley Contract assesses an annual mortality and expense risk charge of 0.60% and an annual administrative expense fee of 0.15% of assets allocated to the Ameritas Separate Account. The Accent Contract assesses an annual mortality and expense risk charge of 0.80% and an annual administrative expense fee of 0.15% of assets allocated to the First Ameritas Separate Account. (Hereinafter mortality and expense risk charge plus the administrative expense fee for each product will be collectively referred to as the ''basic charges'' for the Contracts.)

6. Owners of Medley Contracts may allocate their purchase payments among 40 investment options—39 Subaccounts of the Ameritas Separate Account or an Ameritas fixed account option. Owners of Accent Contracts may allocate their purchase payments among 31 investment options—30 Subaccounts in the First Ameritas Separate Account or a First Ameritas fixed account option. Each Ameritas Subaccount will invest in shares of a corresponding portfolio of The Alger American Fund; American Century Variable Portfolios, Inc.; Calvert Variable Series, Inc. Ameritas Portfolios; Calvert Variable Series, Inc. Calvert Social Portfolios; Variable Insurance Products: Service Class 2; INVESCO Variable Investment Funds, Inc.; MFS Variable Insurance Trust; The Universal Institutional Funds, Inc.; Salomon Brothers Variable Series Funds Inc.; Summit Mutual Funds, Inc., Summit Pinnacle Series; and Third Avenue Variable Series Trust. Each First Ameritas Subaccount will invest in shares of a corresponding portfolio of The Alger American Fund; Calvert Variable Series, Inc. Ameritas Portfolios; Calvert Variable Series, Inc. Calvert Social Portfolios; Variable Insurance Products: Service Class 2; MFS Variable Insurance Trust; and The Universal Institutional Funds, Inc.

7. Ameritas/First Ameritas may in the future decide to create additional Subaccounts to invest in any additional underlying funds as may now or in the future be available. Ameritas/First Ameritas also may decide to combine or eliminate Subaccounts or transfer assets to and from Subaccounts.

8. The basic Contract features may be modified or augmented by a number of ''rider options.'' The rider options permit Contract owners to elect certain Contract features or benefits that fit their particular needs. Generally, the election of a particular rider option will result in higher explicit expenses for Ameritas/First Ameritas or an increased risk that charges associated with the Contract will be inadequate in relation to expenses. Thus, most of the rider options, once elected, result in increased charges over and above the basic charges (0.75% for Medley Contracts and 0.95% for Accent Contracts).

9. Rider options must be chosen at the time of application. Available rider options for Medley Contracts include: a minimum initial premium option; a seven-year or five-year CDSC option; two ''free'' withdrawal options; a one-year step up death benefit; a 5% enhanced death benefit; and a greater of one-year step-up or 5% enhanced death benefit.

10. For an additional annual Contract fee, currently $36, and an annual charge of 0.25%, a Contract may be purchased for a minimum initial premium of at least $2,000. (Both charges are waived when account value is at least $50,000.) Optional CDSC periods of seven and five years may be selected at annual percentage fees deducted monthly, of 0.30% and 0.45%, respectively. ''Free'' withdrawal options include one that (for an annual charge of 0.05%) permits up to 10% of account value to be withdrawn annually and another that (for an annual charge of 0.20%) permits up to the greater of a stated percentage of account value, or earnings, to be withdrawn annually, where the stated percentage of account value is 15% in the first contract year, 30% in the second contract year and 45% in the third and subsequent contract years. Guaranteed minimum death benefit options (one-year ''periodic step-up,'' ''5% roll-up,'' and ''greater of'' features) are available at annual rates of 0.25%, 0.35%, and 0.37% respectively.

11. For Accent Contracts, the only rider option available is a one-year ''periodic step-up'' minimum death benefit at a current annual rate of 0.25% of Separate Account assets.

12. Ameritas/First Ameritas intend to offer an additional rider option under the Contracts which, if elected at the time of application, will result in the crediting of a 4% bonus (the ''Credit'') on all purchase payments made during the first twelve months of the Contract. The Credit on the Contract owner's remitted purchase payments will be funded from the Ameritas or First Ameritas general account and will be credited proportionately among the investment options chosen by the Contract owner. In contract years two through nine, Ameritas/First Ameritas will credit a lesser bonus amount. The amount of the Credit in years two through nine will be equal to 4% multiplied by a linearly decreasing ratio over the nine-year surrender charge period. The following schedule illustrates the decreasing bonus amount credited on premiums paid in years two through nine.

Year	Formula	Reduced bonus (percent)
2	4% × 8/9	3.56
3	4% × 7/9	3.11
4	4% × 6/9	2.67
5	4% × 5/9	2.22
6	4% × 4/9	1.78
7	4% × 3/9	1.33
8	4% × 2/9	.89
9	4% × 1/9	.44

13. For the above rider option, an annualized fee of 0.42% of the daily net assets of the Separate Account (or of the fixed account if elected) will be deducted monthly for the first nine contract years. The option of either electing the Credit or not (an election that can only be made prior to issuance of the Contract), allows prospective purchasers to choose between two different Separate Account charge structures over the first nine contract years. If the Credit is elected, total Separate Account charges under the Contracts, as an annual percentage of the average daily net assets of the respective Separate Accounts for the first nine contract years and assuming no other rider options are elected, will be 1.17% for the Medley Contract and 1.37% for the Accent Contracts. If the Credit is not elected, total Separate Account charges for Medley and Accent Contracts will be 0.75% and 0.95% respectively for all contract years (assuming no other rider options are elected). If the owner expects to surrender the Contract in the first seven contract years, the Credit should not be elected, because in that event he or she will receive a benefit from the Credit that is smaller than the charges paid for it. An owner who holds the Contract for

at least seven years will always benefit from having elected the Credit.

14. The Contract has a ''free look'' period which will vary according to state law but will be at least ten days. Depending on the laws of the state in which the Contract is issued, the amount of the refund will be equal to (i) the value of the Contract, (ii) the purchase payment(s), or (iii) the greater of the previous two values. The Credit (as augmented by any earnings on the Credit or as diminished by any investment losses on the Credit) will not be part of the amount an owner will receive if the free look provision is exercised. Unless the law requires that the full amount of the purchase payment(s) be refunded, the owner bears the investment risk from the time of purchase until he or she returns the Contract. The refund amount may be more or less than the purchase payment(s) the owner made (except in states requiring return of premiums).

15. The Contracts have a contingent deferred sales charge (''CDSC'') that applies to: partial withdrawals within nine years of a premium payment; surrender within nine years of a premium payment; annuitization within two years of a premium payment; or annuitization pursuant to an income option with no life contingency within nine years of a premium payment.

16. The Contracts assess a CDSC of 8% of invested premium payments in the first three years after the premium is paid. Thereafter, the CDSC declines to 7% in years four and five, to 6%, 5%, 4%, and 2% for years six through nine, respectively, and is 0% for years ten or more.

17. If a Credit has been elected, a portion of the Credit, as augmented by earnings or diminished by any investment losses (the ''Credit Value''), will be subject to recapture upon an exercise of free look rights and all withdrawals and annuitizations from the ''Account Value'' (the sum of the values in the Separate Account variable investment options and the fixed account), during the first seven years of the Contracts. The amount of the Credit Value withdrawn is the total withdrawn from the Account Value times the ratio of the Credit Value to the Account Value. During the free look period and before the end of the seventh contract year, portions of the Credit Value withdrawn will be recaptured according to the following formula: CVR = [CV/(AV)] * S * Y, where: CVR = Credit Value Recaptured, CV= Credit Value immediately before the withdrawal, AV = Account Value immediately before the withdrawal, S = Excess of the amount withdrawn over any amount permitted to be withdrawn with no CDSC (pursuant to an optional rider), Y = (10 − contract year of surrender)/9. For withdrawals in contract years one through four (1–4) of the Accent Contracts, factor Y would be capped at no more than 0.60 (in order to comply with New York law).

18. The effect of the above formula (for the contracts other than Accent Contracts in their first 4 contract years) is that the portion of the withdrawn Credit Value to be recaptured during the first seven years will be reduced during each of the first seven contract years. In the first Contract year, one hundred percent (100%) of the Credit Value will be recaptured. In each of years two through seven, the portion of the withdrawn Credit Value that is recaptured will be reduced by one-ninth. No recapture will take place after the seventh Contract year. The effect of the formula for the Accent Contracts is that the portion of the withdrawn Credit Value to be recaptured will remain level during the first four Contract years (when Y will always be 0.60) and then will be reduced by one-ninth during each of Contract years 5–7.

19. Applicants state that the total dollar amount of the surrender charge plus recapture of the Credit Value will not exceed that percentage of premium stated below during the first seven years after a premium payment:

Age (in years) of premium payment	Maximum percentage of premium
1	12.5
2	11.1
3	10.2
4	10.0
5	9.0
6	8.0
7	7.0

20. The Credit Value will not be subject to recapture on the amount contained in a free withdrawal (not subject to the CDSC). Such free withdrawals would only be permitted if the owner had elected an optional free withdrawal rider prior to issuance of the Contract. For purposes of calculating the CDSC, surrenders are considered to first come from the oldest purchase payment made to the Contract, then the next oldest purchase payment and so forth.

21. The Credit Value recaptured will be taken proportionately from each investment option as allocated at the time of the withdrawal. No recapture of the Credit Value will take place: if the Contract is annuitized and applied to a life contingent income option (assuming no premiums paid for two years prior to annuitization), if a death benefit becomes payable, or if distributions are required in order to meet minimum distributions requirements under the Code.

22. After the end of the seventh Contract year, the Credit will not be subject to recapture and, after the ninth year, the 0.42% charge associated with the Credit will be eliminated.

23. If the Contract owner elects the Credit option and later makes a full surrender of the Contract, electing the Credit option will be to the Contract owner's benefit only if the Contract is not surrendered during the first seven contract years. If the Contract is surrendered during the first seven contract years, the Contract Owner will receive less than if the Credit option had not been elected. After seven contract years, and during Contract years 1–3 for the Accent Contracts, both the Account Value and the Surrender Value received upon full surrender of the Contract will be greater if the Credit option is elected, than if it had not been elected.

24. The seven-year or five-year CDSC option is not available if the Contract owner elects the Credit option.

25. Applicants seek exemptions pursuant to Section 6(c) from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22–1 thereunder to the extent deemed necessary to permit Ameritas/First Ameritas to recapture part or all of the Credits and earnings on the Credits, as described above, in the following instances: (i) when an owner exercises the Contract's free look provision; and (ii) when an owner makes a partial withdrawal or a surrender in the first seven Contract years.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act granting the exemptions requested below with respect to the Contracts and any Future Contracts funded by the Accounts or Other Accounts that are issued by Ameritas/First Ameritas and underwritten or distributed by the BROKER or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested

exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines ''redeemable security'' as any security, other than short-term paper, under the terms of the which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Credit in the circumstances set forth in the Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit allocated to his or her annuity account during the first seven years is not entirely vested until after the seventh year. Subsequent credits (in years eight and nine) vest immediately. Unless and until any Credit amount is vested, Applicants submit that Ameritas/First Ameritas retains the right and interest in the Credit. Applicants argue that when Ameritas/First Ameritas recaptures any Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit amount has not vested.

4. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it, and return it for a quick profit. Furthermore, the recapture of the Credit within the first seven Contract years is designed to provide Ameritas/First Ameritas with a measure of protection against a Contract owner surrendering or making a partial withdrawal shortly after a Credit is made thereby leaving Ameritas/First Ameritas insufficient time to recover the cost of the Credit. The Credit Value recaptured will be reduced by one-ninth over the first seven years of the Contract unless the Contract at issue is an Accent Contract where in the first four Contract years, factor Y, as explained above, will be capped at 0.60 to comply with New York law.

5. Applicants represent that it is not administratively feasible to track the Credit in the Separate Accounts once it has been declared. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amount held in the Separate Account, including the Credit, during the free look period and the recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's Contract value will be higher than if no Credit had been added. Ameritas/First Ameritas nonetheless represent that the Contract's fees and charges, in the aggregate, are reasonable within the meaning of Section 26(f) of the 1940 Act.

6. Applicants submit that the provisions for recapture of any Credit under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Applicants believe that a contrary conclusion would be inconsistent with a stated purpose of the National Securities Markets Improvement Act of 1996 (''NSMIA''), which was to amend the Act to ''provide more effective and less burdensome regulation.'' Sections 26(f) and 27(i) were added to the Act to implement the purposes of NSMIA and Congressional intent. Applicants state that the application of Credits under the Contracts should not raise any questions about Ameritas/First Ameritas's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in the Application, without the loss of the relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. It is possible that someone might view Ameritas/First Ameritas's recapture of the Credit as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Account. Applicants believe, however, that the recapture of the Credit does not violate Rule 22c–1. Applicants argue that the recapture of all or part of the Credit does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares. Applicants submit that the proposed recapture of the Credit does not pose such a threat of dilution. To effect a recapture of a Credit, Ameritas/First Ameritas will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the Subaccount(s) to which the owner's Contract value is allocated. The amount recaptured will approximate the amount of the Credits that Ameritas/First Ameritas paid out of its general account assets reduced over the seven year surrender period, as augmented or reduced by investment results. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the

extent deemed necessary to permit them to recapture the Credit under the Contracts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the Application. Applicants submit that having them file additional applications would impair their ability to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application, investors would not receive any benefit or additional protection thereby.

Applicants further submit, for the reasons stated herein, that their exemptive requests meet the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14716 Filed 6–11–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25604 ; File No. 812–11490]

Lord Abbett Series Fund, Inc., et al.; Notice of Application

June 4, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of any current or future series of the Lord Abbett Series Fund, Inc. (''Fund'') and shares of any other investment company that is designed to fund variable insurance products and for which Lord, Abbett & Co. (''Adviser''), or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund together with such other investment companies, the ''Insurance Products Funds'') to be sold to, and held by (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); (b) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); and (c) the Adviser or any of its affiliates.

Applicants: Lord Abbett Series Fund, Inc. and Lord, Abbett & Co.

Filing Date: The application was filed on February 1, 1999, and amendments thereto were filed on August 17, 2001, January 17, 2002, and June 3, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 2002, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0506. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, CT 06880, Attention: Raymond A. O'Hara III, Esq.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, or William Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Fund is a Maryland corporation that is registered under the 1940 Act as an open-end management investment company. The Fund is a series fund currently comprised of four portfolios—Bond-Debenture Portfolio, Growth and Income Portfolio, International Portfolio and Mid-Cap Portfolio. Each Portfolio is a separate series of the Fund with one class of shares except the Growth and Income Portfolio, which has two classes of shares—Variable Contract Class and Pension Class. The Fund may in the future offer additional series and/or classes of shares.

2. The Adviser, a New York partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund.

3. Shares of the Fund will be offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, ''Variable Contracts''). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling any conditions the Commission may impose upon granting the order requested herein. Each Participating Insurance Company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

5. Applicants state that shares of the Insurance Products Funds also may be offered directly to Qualified Plans outside of the separate account context, including without limitation, those trusts, plans, accounts, contracts or

annuities described in Sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k) and 501(c)(18) of the Internal Revenue Code of 1986, as amended (''Code''), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation Section 1.817.5(f)(3)(iii). Shares of the Insurance Products Funds sold to Qualified Plans will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA'').

6. Additionally, shares of a Fund may be offered to the Adviser or any of its affiliates for purposes of providing necessary capital required by Section 14(a) of the 1940 Act or for other investment purposes in compliance with Treasury Regulation 1.817–5(f)(3)(ii). The return on shares of a Fund purchased by the Adviser or its affiliates will be computed in the same manner as for shares held by a separate account. Any shares of a Fund purchased by such persons will be automatically redeemed if and when their investment advisory agreement with a Fund terminates, to the extent required to comply with applicable Treasury Regulations.

7. The Plans may choose one or more Insurance Products Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Insurance Products Funds.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act providing exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by (1) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) (''shared funding''); (3) qualified pension and retirement plans outside the separate account context; and (4) the Adviser or any of its affiliates.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company (mixed funding).

3. The relief granted by Rule 6e–2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies (shared funding). Furthermore, because the relief under Rule 6e–2(b)(15) is available only where shares of the investment company are offered exclusively to separate accounts, exemptive relief is necessary if the shares of the Insurance Products Funds also are to be sold to Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for a flexible premium variable life insurance account under certain circumstances, but does not permit shared funding.

5. In addition, because the relief under Rule 6e–3(T)(b)(15) is available only where shares of the investment company are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Insurance Products Funds also are to be sold to Qualified Plans.

6. Applicants state that current tax law permits the Insurance Products Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life contracts held by the portfolios of the Insurance Products Funds. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. On March 2, 1989, the Treasury Department issued regulations (Treas. Reg. Section 1.817–5), which established diversification requirements for the investment portfolios underlying variable annuity and variable life contracts. The regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. However, the regulations also contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by the trustee of a ''qualified pension or retirement plan'' as defined by Revenue Ruling 94–62, without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. Section 1.817.–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations, which made it possible for shares of an investment company to be held by a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, applicants assert that, given the then current tax law, the sale of shares of the same investment company to separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification

enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary to apply the provisions of Section 9(a) of the 1940 Act to the many individuals who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for variable annuity and variable life insurance contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds. Thus, Applicants state, that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose, would increase monitoring costs incurred by Participating Insurance Companies, and therefore would reduce the net rates of return realized by Variable Contract owners.

10. Applicants submit that the reasons underlying the Commission's grant of relief from Section 9(a) will not be affected in any way by the proposed sale of the Insurance Products Funds to Qualified Plans. Applicants state that the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act remains in place. Applicants further submit that since Qualified Plans are not investment companies and will not be deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are satisfied.

12. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the subclassification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser when an insurance regulatory authority so requires. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser. Under the rules, voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that such changes would: (a) Violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) The adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

13. As indicated above, shares of the Insurance Products Funds sold to Qualified Plans will be held, where applicable, by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the assets of the Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from Plan participants.

14. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Plans are not entitled to pass-through voting privileges.

15. Applicants state that even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding.

16. Where a Plan provides participants with the right to give voting instructions, Applicants state that the

purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

17. Applicants state that there is no contractual or other relationship between the Participating Insurance Companies and any Qualified Plans which, for example, would affect the solvency of the life insurers, affect the performance of the life insurer's contractual obligations, or would be expected to increase the risks undertaken by the life insurer. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of resolution of irreconcilable material conflicts with respect to voting is not present with respect to any of the Qualified Plans.

18. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants assert, however, that this possibility is no different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

19. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

20. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owners as a result of such withdrawal.

21. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. The Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of insurance product. Regardless of the types of Insurance Products Fund shareholders, a Fund's adviser is legally obligated to manage the Fund in accordance with the Fund's investment objectives, policies and restrictions as well as any guidelines established by the Fund's board.

22. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, mixed and shared funding also will facilitate the establishment of additional series of Insurance Products Funds serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life contracts held in the portfolios of management investment companies. Treasury Regulation Section 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

24. Applicants do not see any greater potential for irreconcilable material conflicts arising between the interests of Plan participants under the Qualified Plans and owners of the Variable Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these differences do not raise any conflicts of interest. When distributions are to be made, and a separate account of the Participating Insurance Company or Qualified Plan is unable to net purchase payments to make distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

25. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. ''Senior security'' is defined under the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants submit that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. State insurance commissioners have been given the veto power to prevent, among other things, insurance companies indiscriminately redeeming their separate accounts out of one fund and into another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of (or Plan participants in) Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Variable Contract owners and the interests of participants in Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

27. Applicants state that various factors have hindered insurance companies from offering variable annuity and variable life insurance contracts. Applicants submit that mixed and shared funding should provide several benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the sub-advisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification, and by making the addition of new series more feasible. Applicants assert that therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges to investors. Applicants further note that the sale of shares of the Insurance Products Funds to Plans also can be expected to increase the amount of assets available for investment by the Insurance Products Funds and thus promote economies of scale and greater diversification.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a ''Board'') will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition will be suspended: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor their respective Funds for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners or trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% of more of the assets of an Insurance Products Fund (collectively, ''Participants'') and the Adviser (or any other investment adviser of an Insurance Products Fund) will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. The Adviser (or any other investment advisers of an Insurance Products Fund) and the Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever it has determined to disregard Variable Contract owner voting instructions and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a)

Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of the participating Qualified Plans from the relevant Insurance Products Fund and reinvesting those assets in a different investment medium; and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The Adviser, all Participating Insurance Companies and the Qualified Plans will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

7. As to contracts issued by separate accounts registered under the Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. However, as to Variable Contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to Variable Contract owners to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Products Fund held in its separate accounts for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners whose Contracts are funded through a registered separate account, the Adviser (or any of its affiliates) will vote its shares of any Insurance Products Fund, or any series thereof, in the same proportion as all Variable Contract owners having voting rights with respect to that Fund or series thereof; provided, however, that the Adviser (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

9. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying the Adviser, Participating Insurance Companies, and the Qualified Plans of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participating Insurance Companies and Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Insurance Products Fund and the interests of Qualified Plans investing in the Insurance Products Fund to conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest, and to determine what action, if any, should be taken in response to any such conflict.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2 or 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed and shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Products Funds, the Participating Insurance Companies and Qualified Plans, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, or proposed Rule 6e–3 as adopted, to the extent such Rules are applicable.

13. The Adviser (or any other investment adviser of an Insurance Products Fund), the Participating Insurance Companies and the Qualified Plans, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Adviser (or any other investment adviser of an Insurance Products Fund), the Participating Insurance Companies and Qualified Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of the Adviser (or any other investment adviser of an Insurance Products Fund), the Participating Insurance Companies and the Qualified Plans under the agreements governing their participation in the Insurance Products Funds.

14. If a Qualified Plan or Plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of an Insurance Products Fund, such Plan will execute a participation agreement with such Fund, which includes the conditions set forth herein to the extent applicable. A Qualified Plan or Plan participant will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14715 Filed 6–11–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46032; File No. SR–OPRA–2002–02]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan To Extend a Pilot To Permit Fee-Exempt Access to Market Data

June 5, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 31, 2002, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would extend the pilot period during which off-floor market maker members of participant exchanges will be permitted to access options market data on a fee-exempt basis for an additional two years, until May 31, 2004, or such later date as OPRA may subsequently determine. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

Section VII(d)(vi) of the OPRA Plan provides that during a pilot period, the members of a floor-based exchange that is a party to the OPRA Plan who act in the capacity of brokers or dealers on the party's trading floor, and their counterparts on an electronic exchange that is a party to the OPRA Plan, are permitted to access options market information over the OPRA system without thereby becoming liable to pay OPRA's subscriber fees. In addition, Section VII(d)(vi) of the OPRA Plan provides that the pilot period will end ''on May 31, 2002, or on such later date as OPRA may determine.'' The purpose of the proposed amendment is to reflect the determination by OPRA to extend the expiration of the pilot period provided for in Section VII(d)(vi) of the OPRA Plan for an additional two years, until May 31, 2004, or such later date as OPRA may subsequently determine.

This temporary exemption from subscriber fees was added to the OPRA Plan two years ago, when ISE was about to begin trading options in an entirely electronic market.[3] The purpose of the exemption was to provide equal treatment for that exchange and its specialists and market-makers (and the off-floor specialists and market makers of any other electronic exchange or facility that may in the future be operated by an OPRA participant) so long as the floor-based counterparts of such members of electronic exchanges or facilities are not subject to subscriber fees. At the time the temporary fee exemption was adopted, OPRA had not decided on a permanent basis whether it would continue to exempt floor-based and off-floor specialists and market makers from OPRA fees, or whether it

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange LLC (''ISE''), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] *See* Securities Exchange Act Release No. 43109 (August 2, 2000), 65 FR 48769 (August 9, 2000).

would make all such persons subject to OPRA fees.

OPRA still has not made a final decision concerning the permanent application of subscriber fees to floor-based members of participants or to their counterparts on electronic exchanges or facilities. Accordingly, in order to continue to provide equal treatment to floor-based and electronic options markets and their members, OPRA has determined to continue this temporary exemption from OPRA fees for an additional two years, expiring on May 31, 2004, or on such later date as OPRA may subsequently determine. The effect of this is also to extend for an additional two years the fee exemption applicable to parties to the OPRA Plan that is provided for in Section V(f) of the OPRA Plan, because that exemption applies by its terms for the duration of the pilot period described in Section VII(d)(vi) of the OPRA Plan. The determination by OPRA reflected in this filing makes no change to any of the terms of these fee exemptions; it only extends the pilot period during which they apply.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2),[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–02 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14776 Filed 6–11–02; 8:45 am]

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[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46036; File No. SR–Amex–2002–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC Amending Exchange Rule 175(c) to Permit Limited Side-by-Side Trading and Integrated Market Making

June 5, 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 18, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on March 27, 2002.[4] The Exchange filed Amendment No. 3 to the proposed rule change on April 5, 2002.[5] The Exchange filed Amendment No. 4 to the proposed rule change on June 3, 2002.[6] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to be a specialist, ROT or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker pursuant to Exchange Rule 193 and (2) provide that specified ETFs or TIRs and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 22, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1''). In Amendment No. 1, the Exchange made certain clarifications to the rule text. In particular, the Exchange removed the language ''on another exchange'' from the proposed rule text of Amex Rule 175(c) to clarify that a specialist registered in a stock admitted to dealings on an unlisted basis may act as a specialist, Registered Options Trader (''ROT''), or registered market maker on the Amex as well as on another exchange.

[4] On March 27, 2002, the Exchange filed an amended Form 19b–4 (''Amendment No. 2''). In Amendment No. 2, the Exchange deleted paragraph (l) to the ''Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175,'' because it is redundant with Amex Rule 175(c). In addition, the Exchange corrected a typographical error in the proposed rule text, and amended its statutory basis for the proposed rule change.

[5] On April 5, 2002, the Exchange filed a third amended Form 19b–4 (''Amendment No. 3''). In Amendment No. 3, the Exchange proposed to amend Exchange Rule 193 to clarify that, if an exemption is available under proposed Exchange Rule 175(c): (1) A person associated with an Amex options specialist may act as a Registered Equity Trader or Registered Equity Market Maker in the underlying stock, and (2) a person associated with an Amex stock specialist may act as a ROT in the related stock.

[6] On June 3, 2002, the Exchange filed a fourth amended Form 19b–4 (''Amendment No. 4''). In Amendment No. 4, the Exchange amended the proposed rule change to specify that Exchange-Traded Fund Shares (''ETFs'') and Trust Issued Receipts (''TIRs'') and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers. Accordingly, Amendment No. 4 proposes to permit integrated market making and side-by-side trading in specified ETFs, TIRs, and their related options. In Amendment No. 4 the Exchange also proposed to permit ETF/TIR specialists and their approved persons to trade the overlying options without reference to the requirements of Amex Rule 175(b) or the Guidelines to Amex Rule 175. The Exchange also proposed to amend Amex Rule 174 to require specialists registered in a stock and overlying option to disclose on request to all participants in the stock or options trading crowd information regarding limit orders in either the stock or options limit order book. The Exchange also proposed to amend Amex Rules 900 and 958 to permit side-by-side trading and integrated market making of ETFs and TIRs and their related options.

informaiton or physical barriers or or other restrictions.

The text of the proposed rule change appears below. New text is in *italics;* deletions are in [brackets].

Disclosures by Specialists

Rule 174. (a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) *A stock specialist or specialist member organization that is also registered as the option specialist in the overlying option in a side-by-side trading environment is required to disclose on request to all participants in the option or stock trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the option or stock books.*

Commentary

.01 No change.

.02 No change.

Specialist Prohibitions

Rule 175. (a) No specialist or his member organization, or any member, limited partner, officer, employee or approved person thereof shall, directly or indirectly:

(1) Acquire, hold or grant an interest in any option to purchase or sell or to receive or deliver shares of a stock in which such specialist is registered, except as provided in this Rule; or

(2) Acquire or hold any interest or participation in any joint-account for buying or selling on the Exchange, or through ITS or any other application of the System, any security in which such specialist is registered, except a joint-account with a partner of such specialist or a regular member or regular member organization of the Exchange, which joint-account has been reported to the Exchange pursuant to Rule 360 and not disapproved; or

(3) Acquire or hold any interest or participation in any finder's fee payable in cash, stock, or otherwise, which finder's fee is paid or to be paid by any person in connection with a transaction effected or to be effected by or with the issuer, or in any security of the issuer, of the stock in which such specialist is registered.

(b) With respect to the stock position in a specialist's account, any specialist or member organization having an interest in such account may hold, acquire or grant an interest in listed options to purchase or sell or to receive or deliver shares of such stock only where appropriate to permit such specialist to offset the risk of making a market in the underlying specialty stock. No specialist or member organization having an interest in the specialist's account shall establish or maintain any listed option position which is (i) excessive in terms of the specialist's existing position in the underlying specialty stock or (ii) excessive in terms of a reasonable estimate of potential loss that might be incurred in relation to any such equity position. Any options transactions effected pursuant to this Paragraph (b) shall be made in accordance with the ''Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175'' as promulgated by the Exchange and as may be amended from time to time. Any opening transaction that does not conform to the requirements specified in such ''Guidelines,'' and any failure to take required action to liquidate any option position within the time periods specified in such Guidelines,'' shall be deemed to be a violation of this Rule 175. Notwithstanding the fact that a specialist's options transactions may be in conformity with the ''Guidelines,'' such specialist shall nonetheless be deemed to be in violation of Rule 175 if he has engaged in such options transactions for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock.

A member, approved person in the member organization of a specialist and any limited partner, officer or employee thereof who has a position in any specialty stock of such specialist in any account (other than the specialist's account) may grant or hold an interest in listed options to purchase or sell or to receive or deliver shares of such specialty stock but only to the extent and in the manner, that both as to acquisitions and liquidations, the ''Guidelines for Specialists'' Specialty Stock Options Transactions Pursuant to Rule 175,'' as promulgated by the Exchange and as may be amended from time to time, would permit any such stock position, were it in a specialist's account, to be offset by such listed options by the interested persons in such account.

For purposes of this Paragraph (b), the term ''listed option'' shall mean an option issued by the Options Clearing Corporation or Trans Canada Options Inc., and the term ''specialist's account'' shall mean the account (whether the individual account of the specialist, the account of his member organization or a joint-account as permitted by Rule 360) in which the ordinary trading business of the specialist is conducted.

(c) No specialist or his member organization or any member, limited partner, officer, or approved person thereof shall act as an options specialist or function in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. *Notwithstanding the foregoing:*

(1) A specialist member organization or an approved person of a specialist registered in a stock admitted to dealings on an unlisted basis may act as a specialist, Registered Options Trader or other registered market maker in the related option provided that such persons have established and obtained Exchange approval for procedures restricting the flow of material, non-public corporate or market information between them pursuant to Exchange Rule 193, and

(2) A specialist, specialist member organization or approved person of a specialist or specialist member organization registered in an Exchange-Traded Fund Share or Trust Issued Receipt that meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A may act as a specialist, Registered Options Trader or other registered market maker in the related option without implementing procedures to restrict the flow of information between them and without any physical separation between the underlying Exchange-Traded Fund Share or Trust Issued Receipt and the related option. In addition, paragraph (b) of this Rule and the Guidelines to this Rule are inapplicable to a specialist or specialist member organization registered in an Exchange-Traded Fund Share or Trust Issued Receipt that meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A and the approved persons of such specialist or specialist member organization.[7]

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175

(a) through (k) No change.

(l) *Rescinded.* [Specialist Shall Not Be Options Market Maker

No equity specialist, his member organization, other member, approved person in such member organization or limited partner, officer or employee

[7] The Commission, with the consent of the Exchange, changed ''Exchange Traded'' to ''Exchange-Traded'' in the proposed rule text. Telephone conversation between William Floyd-Jones, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division of Market Regulation (''Division''), Commission, on June 5, 2002.

thereof shall act as an options market maker or options specialist, or function in any capacity involving market making responsibilities, in any option as to which the underlying security is a stock in which the specialist is registered as such.]

Affiliated Persons of Specialists

Rule 193. (a) through (c) No change.
* * * Commentary

Guidelines for Exemptive Relief Under Rule 193 for Approved Persons or Member Organizations Affiliated With a Specialist Member Organization

(a) & (b) No change.

(c) An affiliated upstairs firm seeking the Rule 193 exemption shall submit to the Exchange a written statement which shall set forth:

(i) through (vii) No change.

(viii) *Except as provided in Rule 175(c),* that no individual associated with it may trade as a Registered Trader, Registered Equity Market Maker, or a Registered Options Trader in any stock or option in which the associated specialist organization specializes.

(d) through (f) No change.

Applicability, Definitions and References

Rule 900. (a) No change.

(b) Definitions—The following terms as used in the Rules of this Chapter shall, unless the context otherwise indicates, have the meanings herein specified:

(1) through (37) No change.

(38) Paired Security—The term ''Paired Security'' means a security which is the subject of securities trading on the Exchange and Exchange option trading*, provided, however, that the term ''Paired Security'' shall not mean an Exchange-Traded Fund Share or Trust Issued Receipt which is the subject of securities trading on the Exchange and Exchange option trading if the Exchange-Traded Fund Share or Trust Issued Receipt meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A.*

(39) through end. No change.

Options Transactions of Registered Traders

Rule 958. No Registered Trader shall initiate an Exchange options transaction on the Floor for any account in which he has an interest except in accordance with the following provisions:

(a) through (d). No change.

(e) No equity specialist, odd-lot dealer or NASDAQ market maker may act as a registered trader in a class of stock options on a stock in which he is registered in the primary market therefor, *provided, however, that an equity specialist may act as a registered trader in a class of stock options on an Exchange-Traded Fund Share or a Trust Issued Receipt in which he is registered in the primary market therefor if the Exchange-Traded Fund Share or Trust Issued Receipt meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A.*

(f) through end. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange filed this proposed rule change in connection with its proposal to trade Nasdaq securities on an unlisted basis.[8] This proposed rule change would permit affiliated entities to act as a specialist in a Nasdaq security traded on the Amex and as a specialist, ROT or a registered market maker in options on that Nasdaq security, provided (1) there are Exchange-approved information barriers between the affiliated stock and options operations, and (2) the specialist posts for the stock and options are physically separated so that side-by-side trading[9] is not possible.

Exchange rules impose certain restrictions on the approved persons[10] and other persons that are affiliated with a specialist or specialist unit (collectively ''specialist affiliates''). Among these rules, Amex Rule 175(c) prohibits specialist affiliates of an Amex equity specialist from acting as an options specialist or functioning in any capacity involving market making responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. The Exchange notes that the New York Stock Exchange, Inc. (''NYSE'') has a similar rule.[11] Both the Amex and NYSE rules were adopted in connection with applications by the respective exchanges to list options on their listed equities.[12]

The Amex recently filed proposed rule changes with the Commission to trade Nasdaq securities on an unlisted basis.[13] Additionally, on September 6, 2001, the Exchange filed with the Commission a proposed rule change that would allow the trading, on a pilot program basis, of specified Nasdaq stocks, ETFs and TIRs and their related options at the same location on the Amex trading floor and by the same specialist units and registered traders.[14]

On February 15, 2002, the Commission approved an NYSE proposed rule change, which amended NYSE Rule 105 Guideline (l), to permit approved persons of NYSE specialists to act as a specialist or primary market maker with respect to options on specialty stocks provided there were NYSE-approved internal controls and information barriers in place pursuant to NYSE Rule 98.[15] In light of the Commission's recent approval of the NYSE's filing and the proximity of the expected commencement date of trading in Nasdaq stocks on the Exchange, the Amex proposes to amend Exchange

[8] *See* Securities Exchange Act Release Nos. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002)(proposing to admit trading on the Amex of Nasdaq National Market Securities pursuant to unlisted trading privileges); and 45698 (April 5, 2002), 67 FR 10851 (April 12, 2002)(approving Amex Rule 28, which establishes allocation procedures for securities admitted to dealing on an unlisted trading privilege basis).

[9] ''Side-by-side trading'' refers to the trading of options and the underlying stocks at the same location, though not necessarily by the same specialist.

[10] The Exchange defines an ''approved person'' as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. *See* Article I, Section 3(g) of the Exchange Constitution. The term ''control'' is defined in Exchange Definitional Rule 13.

[11] *See* NYSE Rule 105, Guideline (l). *But see* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567 (February 25, 2002) (order approving amendments to NYSE Rule 105 Guideline (l)).

[12] *See* Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985)(approving SR–NYSE–84–3 and SR–NYSE–84–10); Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988)(approving SR-Amex-88–16).

[13] *See supra* note 8.

[14] *See* SR-Amex-2001–75 (''Proposed Integrated Market Making Pilot''). The Exchange states that this current filing neither amends nor withdraws Amex-2001–75.

[15] *See supra* note 11.

Rule 175 to permit Amex specialists in stocks admitted to dealings on an unlisted basis to act as options specialists, ROTs and registered market makers with respect to the related options provided there are Exchange-approved procedures restricting the flow of material, non-public corporate or market information pursuant to Amex Rule 193. The Amex proposes to implement the proposed rule change on an interim basis while the Commission considers the Exchange's Proposed Integrated Market Making Pilot.[16]

The Exchange also proposes to amend Exchange Rules 174, 175, 900, and 958 to allow integrated market making [17] and side-by-side trading of certain ETFs and TIRs that meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.[18] In connection with this proposal, the Exchange proposes to amend Amex Rule 174 to require an ETF or TIR specialist that is also the specialist in the related option in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option limit order books. The Exchange also proposes to amend Amex Rule 175 to provide that specified ETF and TIR specialists, their member organizations, and their approved persons may trade the related options without reference to the limitations of Amex Rule 175(b) and the Guidelines to Amex Rule 175. The Exchange believes that options specialists could not function as specialists in an integrated market making environment if they were held to the requirements of Amex Rule 175(b) and the Guidelines to Amex Rule 175 that narrowly circumscribe when an equity specialist may trade the related option. The Exchange also believes that there is no regulatory purpose to limiting the options transactions of the approved persons of an ETF or TIR specialist to the standards imposed by Amex Rule 175(b) and the Guidelines to Amex Rule 175 if trading is permitted in ETFs, TIRs and their related options on a fully integrated and side-by-side basis.

The Exchange also proposes to amend the definition of ''Paired Security'' in Amex Rule 900 to provide that ETFs and TIRs that meet the criteria of Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A may trade side-by-side.

Amex Rule 193, like NYSE Rule 98, provides an exemption to various restrictions applicable to specialist affiliates provided the specialist and its affiliates establish procedures to prevent the passage of material, non-public corporate or market information between them. The Commission approved the rules in one order,[19] and, according to the Amex, the Amex and NYSE rules were intended to facilitate the entry of large, well-capitalized firms into the specialist business on primary exchange markets.[20]

Amex Rule 193 requires firms to establish information barriers and internal controls to prevent and/or detect the passage of material, non-public corporate or market information between the specialist and its affiliates. The Exchange states that its surveillance staff routinely reviews trading by specialists and specialist affiliates that have approved Amex Rule 193 procedures to detect possible breaches of the internal information barriers, and its examinations staff annually conducts on-site oversight reviews of firms with Amex Rule 193 exemptions to ensure the adequacy of the firms' procedures.

The Exchange states that Nasdaq stocks and their related options would be traded in areas of the Exchange Floor that are separated from each other.[21] As previously noted, the Amex currently has a filing pending with the Commission that would allow side-by-side trading and integrated market making of securities admitted to trading on an unlisted basis and their related options.[22] Currently, the following areas are considered separate for purposes of stocks and the related options: (1) The Red Room, (2) the Main Trading Floor, (3) the Mezzanine trading level which is located above the Main Trading Floor (except that options on Amex-listed stocks may not trade on that part of the Mezzanine that is visible from the Main Trading Floor),[23] and (4) the back row of the west side of the Exchange's Main Trading Floor.[24] The Exchange notes that it has filed proposals with the Commission to expand the areas where Paired Securities may trade.[25]

2. Statutory Basis

The Exchange believes the basis for the proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act [26] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will:

[16] *See supra* note 14.

[17] ''Integrated market making'' refers to the trading of options and their underlying securities by the same specialist and/or specialist firm.

[18] The criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A is as follows:

- Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.
- The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.
- The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.
- The underlying portfolio must include a minimum of 13 securities.
- All securities in the portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

[19] Securities Exchange Act Release No. 23786 (November 3, 1986), 51 FR 41183 (November 13, 1986) (approving SR-Amex-85–01 and SR–NYSE–85–25).

[20] The Exchange notes that it would not be the primary market for securities admitted to dealings on an unlisted basis.

[21] *See* Amex Rules 900(b)(38), (40) and (41). *See also* Amex Rule 958(f), which prohibits an ROT from executing a trade in an option if he or she has been in the ''Designated Stock Area'' for the related option within the previous 60 minutes.

[22] *See* Proposed Integrated Market Making Pilot, note *supra.*

[23] The Exchange clarified that options on Amex-listed stocks may not trade on that part of the Mezzanine that is visible from the Main Trading Floor. Telephone conversation between William Floyd-Jones, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, on June 5, 2002.

[24] *See* Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) (approving SR–Amex–97–37).

[25] See File Nos. SR–Amex–2002–37 and SR–Amex–2002–38.

[26] 15 U.S.C. 78f(b)(5).

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–21 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46042; File No. SR–NASD–2002–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amendment to Correct Research Analyst Rule Language

June 6, 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 June 5, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASDR''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR. The proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)[3] of the Act and paragraph (f)(6) of Rule 19b–4 thereunder,[4] in that the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until more than 30 days from the date on which it was filed. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 315 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is amending NASD Rule 2711 to correct certain language that was inadvertently included in NASD Rule 2711 when it was submitted for Commission approval. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2711. Research Analysts and Research Reports

Paragraphs (a) through (g): No change.

(h) Disclosure Requirements

(1) Ownership and Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934; *and*

(C) any other actual, material conflict of interest of the research analyst *or member* of which the research analyst [or member] knows or has reason to know at the time of publication of the research report[,] or [of which the research analyst knows or has reason to know] at the time of the public appearance.[; and] [(D) any other actual, material conflict of interest of the member of which the member knows or has reason to know at the time of publication of the research report, or of which the research analyst knows or has reason to know at the time of the public appearance.]

Paragraphs (h)(2) through (h)(11) and paragraph (i): No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR 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

On May 10, 2002, the Commission approved NASD Rule 2711, which is a new NASD rule intended to address research analyst conflicts of interest (''Rule 2711'').[5] The provisions of Rule 2711 become effective on a staggered basis, beginning on July 9, 2002. Among other things, Rule 2711 imposes a number of disclosure requirements on members that issue research reports concerning equity securities and on research analysts that make public appearances in which they recommend or offer an opinion concerning an equity security.

Rule 2711(h)(1)(A) requires members to disclose in research reports and research analysts to disclose in public appearances if the research analyst or a member of the analyst's household has a financial interest in the securities of the subject company and the nature of the financial interest. Rule 2711(h)(1)(B) requires disclosure if the member or its

[5] See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

affiliates own 1% or more of any class of common equity securities of the subject company. Rule 2711(h)(1)(C) requires disclosure of any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of the publication of the research report or at the time of the public appearance.

The purpose of this filing is to correct an unintentional error that appeared in Amendment No. 2 to the initial proposed rule change seeking Commission approval of Rule 2711, which was filed with the Commission on May 2, 2002.[6] Page 6 of Exhibit A to Amendment No. 2 incorrectly quotes the provisions of Rule 2711(h)(1)(C) and includes a paragraph (D) of Rule 2711(h)(1) which was not intended to be part of the final rule. Page 6 of Exhibit A to Amendment No. 2 shows the versions of paragraphs (h)(1)(C) and (D) as they were originally filed with the Commission on February 13, 2002. However, NASDR revised these provisions in Amendment No. 1 to the proposed rule change, which NASDR filed with the Commission on March 7, 2002.[7] In Amendment No. 1, NASDR changed the wording of paragraph (h)(1)(C) and deleted paragraph (h)(1)(D) to conform these provisions to comparable provisions in the New York Stock Exchange (''NYSE'') proposed rule change relating to research analyst conflicts of interest.[8] The Commission published the correct version of Rule 2711(h)(1) for comment in the **Federal Register** on March 14, 2002.[9]

Unfortunately, Exhibit A to Amendment No. 2 showed the version of Rule 2711(h)(1)(C) and (D) as they were originally filed with the Commission, rather than the version of Rule 2711(h)(1)(C) as amended by Amendment No. 1 and published for comment in the **Federal Register**. NASDR submitted the incorrect language by mistake, and did not intend to revert Rule 2711(h)(1)(C) back to its original form or to reintroduce old paragraph (h)(1)(D).

Accordingly, NASDR is making this filing to correct this error so that the language of Rule 2711(h)(1) is consistent with the comparable NYSE rule language and reflects NASDR's true intent.

(2) Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASDR believes that correcting the language of Rule 2711(h)(1) to reflect the language that was published for comment and that NASDR intended to adopt is consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR believes that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)[10] of the Act and paragraph (f)(6) of Rule 19b–4[11] thereunder,[12] in that the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing.[13] At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–74 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14779 Filed 6–11–02; 8:45 am]

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[6] See Letter from Philip Shaikun, Assistant General Counsel, NASDR, to James A. Brigagliano, Assistant Director, Division of Market Regulation (''Division''), Commission (May 2, 2002) (''Amendment No. 2'').

[7] See Letter from Thomas M. Selman, Senior Vice President, Investment Companies, Corporate Financing, NASDR, to Katherine A. England, Assistant Director, Division, Commission (March 7, 2002) (''Amendment No. 1'').

[8] See NYSE Rule 472(k)(1)(i)(c).

[9] See Securities Exchange Act Release No. 45526 (March 8, 2002), 67 FR11526, 11528 (March 14, 2002).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under Rule 19b–4(f)(6)(iii), the NASDR provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

[13] The NASD notes that the proposed rule change does not alter the effective dates of Rule 2711 (as amended by this proposed rule change) that the Commission approved on May 10, 2002.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46029; File No. SR–PCX–2002–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Firm Quote Size for Disseminated Market Quotes for Customer Orders Entered on the Exchange

June 4, 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 May 30, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules relating to the firm quote size applicable to disseminated market quotes for customer orders entered on the Exchange. Specifically, the Exchange proposes to make a systems change to allow the true size of customer orders in the limit order book to be disseminated through the Options Price Reporting Authority (''OPRA'') as the PCX firm quote size whenever such orders represent the best bid or offer on the Exchange.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

PACIFIC EXCHANGE, INC.

RULES OF THE BOARD OF GOVERNORS

Text of the Proposed Rule Change:

¶ 5221 Firm Quotes

Rule 6.86(a)–(b)—No change.

(c) Obligations of Responsible Brokers or Dealers

(1) Customer Orders. Except as provided in subsection (d), below, each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be *one contract* [20 contracts] for each option series.

(A) Dissemination of the Size of Orders in the Limit Order Book. If one or more orders in the limit order book represent the best bid or offer on the Exchange, then the Exchange will disseminate via OPRA the aggregate size of such order or orders as the firm quote size for which the Responsible Broker or Dealer will be firm. In such circumstances:

(i) If one or more additional limit orders at the same price to buy or sell the same series of option contracts are entered into the limit order book for representation on the Exchange, then the firm quote size then being disseminated in that series will be automatically increased to reflect the adjusted size of such orders in the limit order book at that price; and

(ii) If the number of contacts in the limit order book at the same price to buy or sell the same series of option contracts has been reduced because of an execution or cancellation of one or more orders in the limit order book, then the firm quote size then being disseminated in that series will be automatically decreased to reflect the adjusted size of such orders in the limit order book at that price.

* * * * *

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 PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently complies with Rule 11Ac1–1 under the Act [3] (''Quote Rule''), by having established by rule and periodically publishing the quotation size for which each Responsible Broker or Dealer on the Exchange is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer. Specifically, the minimum quotation size established by rule and periodically published by the Exchange for ''customer'' orders is currently twenty contracts for each option series. In addition, the minimum quotation size established by rule and periodically published by the Exchange for ''broker-dealer orders'' is currently one contract for each option series.

The Exchange proposes to amend its PCX Rule 6.86(c)(1), which relates to the obligations of Responsible Brokers or Dealers [4] with respect to customer orders. PCX Rule 6.86(c)(1) currently provides:

''Except as provided in subsection (d), * * * each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be 20 contracts for each option series.''

The Exchange proposes to amend the second sentence of this rule, so that it would state: ''The minimum quotation size established by rule and published by the Exchange for customer orders will be one contract for each option series.''

The Exchange notes that its LMMs are currently obligated to ''[h]onor guaranteed markets, including markets required by PCX Rule 6.86, Firm Quotes, and any better markets pledged during the allocation process.'' [5] Since all LMMs on the PCX have pledged during the allocation process to make markets for at least twenty contracts (and in some cases more than twenty contracts), LMMs would continue to be required to disseminate, at a minimum, firm quotes for at least twenty contracts (in issues currently allocated to such LMMs), unless such pledges are rescinded.[6] Accordingly, LMM quotes generally would be for at least twenty contracts or such other minimum number that the LMM has pledged to honor during the allocation process. The effect of the proposed rule change, however, is that if the Exchange is disseminating a quote on behalf of a customer order, and that order is for less than twenty contracts, the Exchange would no longer disseminate twenty contracts on behalf of that customer order, and instead, would disseminate the order's true size. Consequently, in such circumstances, the Responsible Broker or Dealer will no longer be required buy or sell option contracts at the price established by a customer order for less than twenty contracts.[7]

[3] 17 CFR 240.11Ac1–1. *See generally* Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (order approving rule changes relating to the application of the Quote Rule to options trading).

[4] PCX Rule 6.86(a)(2) provides, in part, that ''the term 'Responsible Broker or Dealer' means that with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker (''LLM'') and any registered Market Makers constituting the trading crowd in such option series will collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.''

[5] *See* PCX Rule 6.82(c)(2).

[6] The Exchange also notes that with respect to option issues to be allocated in the future, LMMs may commit to making minimum size markets in an amount other than twenty contracts, but these pledges will apply only if the Options Allocations Committee accepts them.

[7] For example, assume the LMM is disseminating a market of 2 bid, 2.20 asked, in a particular option series for which the guaranteed size is twenty

Continued

The Exchange is also proposing to adopt new subsection (A) to Rule 6.86(c)(1), relating to the dissemination of the size of orders in the Exchange's limit order book. Currently, if the best bid or offer on the Exchange is represented by one or more orders in the limit order book, and the aggregate size of such order or orders is less than the minimum customer firm quote size (*i.e.,* twenty contracts), then the Exchange disseminates the minimum customer firm quote size via OPRA as its firm quote. Under the proposal, if one or more orders in the limit order book represent the best bid or offer on the Exchange, then the Exchange would disseminate via OPRA the aggregate size of such order or orders as the firm quote size for which the Responsible Broker or Dealer would be firm.[8]

In that regard, the Exchange proposes to increase or decrease the firm quote size in such circumstances as follows: First, if one or more additional limit orders at the same price to buy or sell the same series of option contracts are entered into the limit order book for representation on the Exchange, then the firm quote size then being disseminated in that series would be automatically increased to reflect the adjusted size of such orders in the limit order book at that price. Second, if the number of contacts in the limit order book at the same price to buy or sell the same series of option contracts has been reduced because of an execution or cancellation of one or more orders in the limit order book, then the firm quote size then being disseminated in that series would be automatically decreased to reflect the adjusted size of such orders in the limit order book at that price.

The Exchange believes that the proposed rule change would encourage deeper and more liquid markets on the Exchange. Specifically, the proposed rule change would reduce the risk that LMMs and Market Makers would be obligated to buy or sell option contracts at prices established by other investors, and, therefore, they would face less liability when increasing their guaranteed Auto-Ex or firm quote sizes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–PCX–2002–30 and should be submitted by July 3, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes the proposed rule change is consistent with the section 6(b)(5) of the Act[12] requirement that the rules of an exchange be designed to facilitate transactions in securities, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal to change the firm quote size for customer orders from twenty contracts to one contract for each option series is consistent with Rule 11Ac1–1(d) under the Act.[13] The Commission also believes that the Exchange's proposal to disseminate the actual size of customer limit orders whenever such orders are the best bid or offer on the Exchange should help to increase transparency by providing more accurate quotation information, which is consistent with section 11A of the Act.[14] Finally, the Commission understands that the proposed rule change is a step towards implementing the Exchange's plan to disseminate quotations with actual size on a floor-wide basis in the near future, which should further increase transparency and enhance the quality of PCX's quotation information that is disseminated to the public.

The Commission finds good cause, consistent with section 19(b)(2) of the Act,[15] to approve the proposed rule

contracts. Then assume that an incoming customer order to buy one contract for 2.10 is entered on the Exchange, making the new best bid and offer on the Exchange 2.10 bid, 2.20 asked. Under the current rule, the Exchange disseminates twenty contracts as the size of the 2.10 bid. If a market order to sell twenty contracts is then entered in that series, the Responsible Broker or Dealer (generally, the LMMs) is obligated to buy the balance of 19 contracts at a price of 2.10. The risk from these types of situations discourages LMMs from increasing their guaranteed sizes (whether for Auto-Ex or Firm Quote Rule purposes) because the greater their guaranteed sizes, the greater the potential liability. Under the proposed rule change, the Exchange will disseminate the true size of the customer order for one contract and the Responsible Broker or Dealer will no longer be obligated to ''fill in'' the difference between one contract and the guaranteed size.

[8] The Exchange notes that pursuant to PCX Rule 6.75(a)–(b), orders in the limit order book have priority over all other bids or offers at the same price then being represented at the trading post. Accordingly, such orders in the limit order book must be filled in their entirety before other bids or offers at the same price are filled.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.11Ac1–1(d).

[14] 15 U.S.C. 78k–1. The Commission notes that in Section 11A(a)(1)(C)(iii) of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to quotations for securities. 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] 15 U.S.C. 78s(b)(2).

change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the PCX has represented that it is technologically capable of implementing the proposal immediately upon approval from the Commission. The Commission believes that accelerated approval of this proposal should permit the PCX to immediately begin to disseminate quotes with actual size when customer limit orders represent the best price on the Exchange, which should reflect more accurate trading interest. Accordingly, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[16] to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–2002–30) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14717 Filed 6–11–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46040 ; File No. SR–Phlx–2002–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Committee Voting Procedures

June 6, 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 April 23, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[16] *Id.*

[17] *Id.*

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to modify the voting procedures followed by the standing and special committees of the Phlx's Board of Governors (''Committees'') to allow the Committees to take action in cases where a quorum attends a Committee meeting, but a majority of members recuse themselves or abstain from the vote of the Committee, provided that at least two Committee members vote. The text of the proposed rule change appears below. New language is italicized; deleted language is in brackets.

By-Law Article X, Section 10–3; Proceedings of Special and Standing Committees

(a) Except as herein otherwise prescribed, and subject always to the control and supervision of the Board of Governors, each Standing Committee and Special Committee shall determine the manner and form in which its proceedings shall be conducted, and shall make such regulations for its government as it shall deem proper and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in the by-laws or rules, the decision of a majority of those [present] *voting* at a meeting at which a quorum is present, *provided at least two vote*,[or the decision of a majority of those participating when at least a quorum participates,] shall be the decision of the Committee.

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 Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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 Phlx represents that the purpose of the proposed rule change is to improve the functioning and efficiency of Committees. Specifically, the proposal will permit the Committees to take action in cases where a quorum attends a Committee meeting, but a majority of members recuse themselves or abstain from the vote of the Committee, provided that at least two Committee members vote.

Currently, the Phlx By-laws state that ''a decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee'' [3] (together, the ''Present Approval Scenarios''). A quorum is ''a majority of all [of the Committee's] members then in office.'' [4] The Present Approval Scenarios both require a majority of the Committee to vote on a motion for it to have any chance of approval.[5] According to the Phlx, this may delay or preclude a Committee from taking action, thereby reducing the responsiveness of a Committee to rapidly changing market conditions and limiting overall Committee effectiveness.

The Phlx believes that the proposed rule change should help to increase Committee responsiveness and effectiveness by allowing for Committee action when a quorum attends a meeting, but the subject matter of the Committee action requires Committee members to recuse themselves or abstain from voting on the proposed action. However, in no case would Committee action result from the vote of one Committee member alone because the proposal requires at least two Committee members to vote to have a valid Committee action. Under the proposed rule change, the Exchange considers Committee members who recuse themselves or abstain from voting to be present for purposes of a quorum.

[3] *See* Phlx By-law Article X, Section 10–3(a).

[4] *Id.*

[5] For example, if five Committee members attend a meeting of a nine member Committee, those five members constitute a quorum because five is a majority of nine. If a proposal comes before the Committee and three of the members recuse themselves, then two Committee members are left to decide the matter. Under the Present Approval Scenarios, even though a quorum is present, (recused members count as present, but not participating) the Committee could not take action because it could not obtain an affirmative vote of the majority of the quorum because only two members may vote and three votes are needed to constitute a majority of the quorum. Under the proposed rule change, those two members could take action if both of them voted for the proposal because the Committee would be able to take action when a majority of those voting (two are voting and a majority of two is two) when a quorum is present and at least two vote.

The Phlx notes that the proposal is based on the rules of the Pacific Exchange, Inc. (''PCX'').[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(3) of Rule 19b–4 thereunder[10] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–27 and should be submitted by July 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14777 Filed 6–11–02; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* PCX Rule 11.2(a). *See also* Securities Exchange Act Release No. 43619 (November 27, 2000), 65 FR 75754 (December 4, 2000) (notice of filing and immediate effectiveness of File No. SR–PCX–00–44).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46041; File No. SR–PHLX–2002–29]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Adopting Phlx Rule 757, Anti-Money Laundering Compliance Program

June 6, 2002.

On April 24, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule changed to adopted Phlx Rule 757, Anti-Money Laundering Compliance Program. The proposed rule change was published for comment in the **Federal Register** on May 3, 2002.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the Phlx's proposed rule change, and finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[4] Section 6(b)(5) requires the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds that the Phlx's proposed rule change accurately, reasonably, and efficiently implements the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act) as it applies to Phlx members. The Commission notes that anti-money laundering compliance programs will evolve over time, and that improvements to anti-money laundering compliance programs are inevitable as Phlx members find new ways to combat money laundering and to detect suspicious activities.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PHLX–2002–29) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–14780 Filed 6–11–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45830 (April 26, 2002), 67 FR 22472.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3408]

State of West Virginia, Amendment #1; Disaster Loan Areas

In accordance with notices received from the Federal Emergency Management Agency, dated May 20 and June 6, 2002, the above-numbered Declaration is hereby amended to include Kanawha and Raleigh Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding and landslides, and to establish the incident period for this disaster as beginning on May 2, 2002 and continuing through May 20, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified

date at the previously designated location: Clay, Fayette, Jackson, Nicholas, Putnam, and Roane Counties in West Virginia. All other counties contiguous to the above-names primary counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is July 4, 2002, and for economic injury the deadline is February 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 6, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–14744 Filed 6–11–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 4049]

30-Day Notice of Proposed Information Collection: Form DS–157, Supplemental Nonimmigrant Visa Application (OMB Control #1405–0134)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Supplemental Nonimmigrant Visa Application

Frequency: Once per respondent.

Form Number: DS–157.

Respondents: All nonimmigrant visa applicants.

Estimated Number of Respondents: 9,600,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 9,600,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E ST NW., RM L–703, Washington, DC 20520, who may be reached on 202–663–1163. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: May 28, 2002.

Wayne Griffith,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–14822 Filed 6–11–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2000–7800]

RIN 2105–AC94

Statement of Policy on Alternative Dispute Resolution

AGENCY: Office of the Secretary, DOT.

ACTION: Statement of policy.

SUMMARY: The Department of Transportation publishes this Statement of Policy to further its commitment to using alternative dispute resolution (ADR) to advance national transportation goals by preventing, minimizing, and resolving disputes among our employees and with external parties, in a mutually acceptable and cost-effective manner. This policy statement announces the Department's continuing interest in collaborative problem-solving.

DATES: This notice is effective June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Judith S. Kaleta, Senior Counsel for Dispute Resolution and Dispute Resolution Specialist, Room 10428, 400 Seventh Street, SW., Washington, DC 20590. 202–493–0992. *judy.Kaleta@ost.dot.gov*

SUPPLEMENTARY INFORMATION:

Statement of Policy on Alternative Dispute Resolution (ADR)

ADR is a collaborative, consensual dispute resolution approach. It describes a variety of problem-solving processes that are used in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR encompasses mediation, facilitation, conciliation, factfinding, mini-trials, negotiation, negotiated rulemaking, neutral evaluation, policy dialogues, use of ombuds, arbitration, and other processes that usually involve a neutral third party who assists the parties in preventing, minimizing the escalation of, and resolving disputes. The efficient and effective use of ADR will help us resolve disputes at an early stage, in an expeditious, cost-effective, and mutually acceptable manner.

The Department of Transportation is committed to advancing our national transportation goals though alternative dispute resolution. We will consider using ADR in all areas including workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community.

We will ensure that neutrals disclose any actual or potential conflicts of interest.

We will provide learning and development opportunities for our employees so that they will be able to use conflict resolution skills, understand the theory and practice of ADR, and apply ADR appropriately.

We will use a variety of evaluation and assessment strategies to measure and improve our processes and our use of ADR.

We will allocate resources to support the use of ADR.

We will provide confidentiality consistent with the provisions of the Administrative Dispute Resolution Act and other applicable Federal laws.

The Department will attempt to incorporate ADR in its dispute resolution, or as appropriate, rulemaking processes. In addition, either on our own initiative or in response to a request, the Department will examine the appropriateness of using ADR on a case-by-case basis. ADR is voluntary and the Department will

not impose its use on parties. The decision-making on when to use ADR should reflect sound judgment that ADR offers the best opportunity to resolve the dispute. In appropriate disputes, the Department will use ADR in a good-faith effort to achieve consensual resolution. However, if necessary, we will litigate or participate in some other process to resolve a dispute.

We will work together, internally and with external stakeholders and experts, to further ADR use across the Department. However, decision-making on incorporating ADR into dispute resolution processes, using ADR to resolve a particular dispute, and allocating resources rests with the Department's operating administrations, secretarial offices, or Office of the Inspector General.

We are committed to eliminating all barriers to equal opportunity for all employees and persons who participate in our programs. A disability on the part of one or more parties otherwise willing to use ADR will not act as a bar to its use.

All employees and persons who interact with the Department are encouraged to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

Background

As the Department of Transportation strives to meet national transportation goals, we recognize the need to collaborate, to work together in the spirit of cooperation, and to form partnerships, internally and externally. Experience at the Department, in other Federal agencies, and in the private sector shows that alternative means of dispute resolution can achieve mutually acceptable solutions more effectively than traditional, non-collaborative processes. Mediation, facilitation, conciliation, factfinding, mini-trials, negotiation, negotiated rulemaking, early neutral evaluation, policy dialogues, use of ombuds, arbitration, and other processes that usually involve a neutral third party who assists the parties in preventing and resolving disputes, when used effectively, will help us resolve potential conflicts and disputes at an early stage and in an expeditious, cost-effective manner. These approaches to problem-solving are not just ''alternatives,'' but an integral part of the way we do business at the Department. We are issuing this statement of policy on the use of alternative dispute resolution to further our commitment to its use.

For purposes of this initiative, ''the Department'' or ''we'' refers to the Office of the Secretary, the operating administrations (the United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the Maritime Administration, the Saint Lawrence Seaway Development Corporation, the Research and Special Programs Administration, the Transportation Security Administration, the Bureau of Transportation Statistics, and the Transportation Administrative Services Center), and the Office of Inspector General.

On November 15, 2000, the Department published an interim policy statement on the use of alternative dispute resolution (65 FR 69121). The Department requested comment on the statement, on how to incorporate ADR into our processes, and how to encourage its use in appropriate circumstances. The Department also requested input on areas of agency activity that would benefit from a dispute resolution process that incorporates ADR techniques. The Department noted the following areas for consideration: workplace issues, formal and informal adjudication, issuance of regulations, enforcement and compliance, issuing and revoking licenses and permits, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community.

Response to Request for Comments

In response to the request, the Department received seven comments. Commenters included private neutrals; an attorney representing clients in various motor carrier related activities; a State department of transportation; and the American Bar Association, Commission on Mental and Physical Disability Law, Subcommittee on Disability Dispute Resolution and Mediation.

None of the commenters objected to the initiative and some were very supportive of the Department's efforts. For example, one commenter noted that ''once tried, ADR proves to be a valuable method to resolve difficult issues, disputes, discrepancies and squabbles.'' Another stated that ADR ''can often conserve all the participants'' time, energy, and resources (and costs associated with them), speed the time for resolution of matters, and smooth over some of the rougher edges created by the adversarial nature of many of the matters in which DOT is involved.''

Some commenters offered suggestions and recommendations for clarifying and strengthening the policy. Their comments and the Department's response follow.

ADR Is Voluntary

One commenter suggested that the Department add to the section on ''No Creation of Rights'' that the Department ''would not require or impose the use of ADR on an unwilling private sector entity or employee.''

The Department agrees that ADR is voluntary and there must be mutual agreement to use it. ADR cannot work unless the users of it want it to work and want to use it. Therefore, the Department has included a statement on the voluntary nature of ADR in its policy statement and in the section on ''No Creation of Rights.''

Litigation

One commenter noted that the Interim Statement of Policy said that the Department will use ADR to resolve litigation. The commenter suggested that we clarify whether the Department has the ability or the authority to use ADR to resolve a matter in litigation or whether the Department of Justice makes that decision.

The Department of Transportation works closely with the Department of Justice to ensure that the interests of the United States are fully and properly represented. Together, we determine whether litigation should be initiated and whether adverse decisions should be appealed. Likewise, we determine whether ADR would be appropriate in particular cases. Furthermore, with the passage of the Alternative Dispute Resolution Act of 1998, in which Congress directed all Federal courts to establish ADR programs, continued growth in ADR usage by the Federal government in litigation matters is highly likely. The Department of Justice estimates that its use of ADR has quadrupled from 5 years ago to more than 2000 cases in FY 2000.

Administrative Enforcement Proceedings

An attorney representing clients in various motor carrier related activities recommended that the Department consider using ADR in motor carrier enforcement proceedings. He provided three reasons in support of this position. First, he noted that ADR results in cost savings. Second, he stated that ''to the extent the resolution of enforcement matters may be speeded up by ADR, this has the benefit of a quick response to a perceived safety problem.'' Third, he said that ''ADR can frequently take the

rough edges off of adversarial proceedings * * * When one is engaged in a bitter dispute, one may lose sight of the greater purpose.'' Referring to the FMCSA enforcement decisions as reported on the Department's Docket Management System, he noted that ''the tenor of the pleadings on both sides often appears to be bitter, going well beyond the mere assertion of different, conflicting arguments about what the law requires and what penalty, if any, should be imposed.''

While the commenter referred to the FMCSA enforcement program, the Department considered the appropriateness of ADR for all its administrative enforcement proceedings. The Department is committed to concluding its administrative enforcement proceedings as fairly, effectively, efficiently, and expeditiously as possible. The Department will use ADR as an opportunity to further develop and refine its processes to achieve less costly, less contentious, and more timely decisions when appropriate. Parties to any enforcement proceeding, both Departmental personnel and regulated entities, are encouraged to identify cases that are appropriate for a variety of ADR techniques, including mediation, early neutral evaluation, and arbitration. The interim statement of policy included a list of ADR considerations. For the ease of those wishing to determine whether ADR may be appropriate, these considerations are included in the Appendix. As noted below, a party may want to explore the possibility of using ADR without talking with their immediate adversary. Therefore a list of ADR contacts is available on the Department's ADR web site: *www.dot.gov/adr.* However, ADR is voluntary and there must be mutual agreement to use it.

Evaluation

One commenter suggested that the evaluation of ADR should include a comparison of the traditional processes. The commenter noted that ''if ADR were evaluated alone, it might look pretty terrible since no one in particular likes conflict and ADR is both that and requires the expenditure of resources that people would just as soon not spend; but, as compared to litigation and traditional rulemaking, it is highly likely that it will be viewed quite positively.''

Evaluation is an important component of an ADR program. The Department will use a variety of evaluation and assessment strategies to provide valid and reliable information for measuring and improving performance. Depending on the ADR program, we may look at the number of attempts to use ADR, the number of resolutions, customer satisfaction with the process, the neutral, and /or the resolutions, estimated cost-and/or time-savings, or whether the program is meeting its stated goals. The Department agrees that evaluating ADR without evaluating traditional processes may lead to a distorted and inaccurate picture. In FY 2001, the Department's Dispute Resolution Council conducted a program evaluation of the Department's use of mediation to resolve complaints of discrimination. As a result of this effort, the evaluation found that the costs associated with traditional processes are not usually readily available. We will attempt to estimate those costs when evaluating ADR use, even if based on anecdotal information and non-quantifiable data.

Confidentiality

One commenter complimented the Department on the way confidentiality was addressed.

The Department recognizes the importance of confidentiality. In some instances, many of the benefits of ADR can be realized only through confidential proceedings. Confidentiality ensures that the parties may speak freely with a neutral who will not disclose their confidences to other parties or to the outside world. Without that assurance, the parties may be unwilling to freely discuss their interests and possible settlements with the neutral. Confidentiality also allows the parties to raise sensitive issues and discuss creative ideas and solutions that they would be unwilling to discuss publicly.

Although negotiated rulemaking is a process conducted under the Federal Advisory Committee Act at public meetings that have been announced in the **Federal Register**, confidentiality may also be a consideration for the participants. For example, a convenor who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate may agree not to disclose the identity of a party who raises a particular concern about an agency. Information shared in caucuses may also be confidential.

The Administrative Dispute Resolution Act generally provides that communications (including a neutral's notes and documents prepared for the proceedings) between a neutral and the parties must be kept confidential by the neutral and the parties, unless certain specific exceptions exist. A court may require disclosure of such information if it is necessary to prevent a manifest injustice, help establish a violation of law, or prevent harm to the public health or safety. The injustice, violation, or harm must be of a sufficient magnitude in the particular case to outweigh the integrity of the dispute resolution proceedings. In addition, other Federal laws may impact the confidentiality of information in specific cases.

Working Together

One commenter questioned the meaning of the statement in the Interim Statement of Policy on ADR: ''We will work together to further ADR.'' The commenter requested that the Department clarify whether the statement was intended to apply to the Department and its employees or whether it referred to the Department working with affected interests on the outside. The commenter suggested that an inclusion of outside interests, both stakeholders and experts, be made explicit.

The Department has adopted this suggestion and the statement of policy reads accordingly.

Persons With Disabilities

The American Bar Association, Commission on Mental and Physical Disability Law, Subcommittee on Disability Dispute Resolution and Mediation, suggested that the Department incorporate the provisions of the ADA Mediation Guidelines (*http://www.cardozo.yu.edu/cojcr/guidelines*) or adopt some modifications of the Guidelines to meet the Department's needs. Under the Guidelines, ''ADA mediation'' means programs mediating claims arising under the Americans with Disabilities Act and other disability civil rights statutes. The Guidelines address issues in the areas of program and case administration, process, training, and ethics.

The Department is committed to eliminating all barriers to equal opportunity for all employees of the Department, for all applicants for jobs in the Department, and for the persons who participate in the Department's programs, services, and activities. The Department will comply with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability and requires our programs, activities, and facilities to be accessible, subject to the limitations contained within the statute and our regulations. A disability on the part of one or more parties otherwise willing to use ADR will not act as a bar to its use. The Department will bear the cost of these accommodations. As particular

ADR programs are established, we will consider whether to fully incorporate the ADA Mediation Guidelines.

Requesting the Department To Consider ADR

One commenter suggested that we provide persons who are potentially interested in using ADR with a way of exploring the possibility of its use. The commenter noted that parties should be able to explore the potential for using ADR without talking with their immediate adversary.

The Department agrees. We have updated the Department's ADR web site (*www.dot.gov/adr*) to include information about the Department's Dispute Resolution Council and contact information for the Department's Dispute Resolution Specialist and the Deputy Dispute Resolution Specialists in each of the operating administrations and the Office of Inspector General.

Internal vs. External Neutrals

One commenter recommended that the Department rely on outside contractors to serve as neutrals in ADR proceedings. The commenter stated that in-house staff may ''have an opinion about the general nature of the problem and therefore may not be neutral.'' In addition the commenter noted that there may be a perception of bias by the parties. Another commenter noted that the United States Postal Service has successfully used private mediators to resolve employment disputes and that feedback from employees and management has been extremely positive.

In using a variety of ADR techniques, the Department has relied upon both internal and external neutrals. For example, the Department established a mediation program to resolve EEO complaints, in which employees serve as mediators as a collateral duty to their assigned positions. In addition, depending upon the availability of Departmental employees or to avoid conflicts of interest, private mediators have been used. In litigation, the Department has used private mediators. The Department of Justice has noted that private mediators are the best source of mediators for government cases. In the area of environmental ADR, the Department is considering external neutrals. The U.S. Institute for Environmental Conflict Resolution is assembling a roster of qualified dispute resolution and consensus building professionals with particular experience in transportation cases. The Institute will draw from its roster of qualified neutrals with substantial experience in environmental conflict resolution. This Transportation Roster is part of an ADR system designed through an interagency agreement with the Federal Highway Administration. For most negotiated rulemakings, the Department has generally relied upon outside neutrals. However, internal neutrals have been used to convene and facilitate negotiated rulemaking when parties were interested in the process, but there was a lack of funding to pay for an outside neutral.

The Department will continue to make a determination of whether to use an internal or external neutral on a case-by-case basis, considering a variety of factors, including costs. As a practical matter, in some instances, the Department may be choosing between in-house neutrals or no ADR process. In response to the comment, we have added a provision to the policy statement that neutrals will disclose actual and potential conflicts of interest. This is consistent with the Model Standards of Conduct for Mediators that have been approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution.

Environment

Appendix II to the Interim Statement of Policy (65 FR 69125) provided examples of a variety of the Department's ADR initiatives. The environmental example noted that, with the assistance of the U.S. Institute for Environmental Conflict Resolution, a Federal agency created to assist parties in resolving environmental conflicts around the country that involve Federal agencies or interests, the Federal Highway Administration (FHWA) is working on developing an ADR system that would be applied during the National Environmental Policy Act (NEPA) process. One State department of transportation (the State) commented on the example. The State welcomed the use of ADR as long as it has the discretion to participate in ADR, without the risk of losing Federal funds. The State is concerned that the Department may create a policy implementing ADR that would mandate or compel the use of ADR to resolve disputes.

A copy of the State's comments was provided to FHWA for its consideration and, as this effort continues, FHWA will continue to consider input. Draft documents relating to FHWA's initiative will be posted for review and comment on its environmental streamlining website *http://www.fhwa.dot.gov/environment/strmlng.htm*. For additional information, you may call Lucy Gariliauskas at 202–366–2068 or Fred Skaer at 202–366–2058. You may write to them at FHWA, Office of National Environmental Policy Act Facilitation, 400 Seventh Street, SW, Washington, DC 20590.

List of ADR Considerations

The interim statement of policy included a list of ADR considerations. The Department did not receive any comments on that list. For the ease of those wishing to determine whether ADR may be appropriate, these considerations are included in the Appendix.

Legal Authority

This policy statement is issued pursuant to the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, which authorizes and encourages Federal agencies to use consensual means of dispute resolution as alternatives to traditional dispute resolution processes. The Act defines alternative means of dispute resolution as ''any procedure that is used to resolve issues in controversy * * *'' It defines ''issue in controversy'' as ''an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement * * *'' The Act requires that each Federal agency adopt a policy that addresses the use of ADR and appoint a Dispute Resolution Specialist. Congress enacted the Administrative Dispute Resolution Act to reduce the time, cost, inefficiencies, and contentiousness that too often are associated with litigation and other adversarial dispute resolution mechanisms.

This policy is also consistent with several other Federal statutes and regulations.

The Negotiated Rulemaking Act of 1996, 5 U.S.C. 561–570, establishes a framework for use of negotiated rulemaking. Congress enacted the Negotiated Rulemaking Act to increase the acceptability and improve the substance of rules, making it less likely that the affected parties will challenge the rules or resist enforcement.

The Alternative Dispute Resolution Act of 1998, 28 U.S.C. 651–658, directs all Federal courts to establish ADR programs.

The Contracts Disputes Act, 41 U.S.C. 605(d) and (e), permits the use of ADR for resolving claims.

The FAA's Procedures for Protests and Contracts Disputes, 14 CFR Part 17, encourages the use of ADR as the primary means of resolving procurement related disputes.

The Federal Sector Equal Employment Opportunity Regulations, 29 CFR Part 1614 requires agencies to establish or make available an ADR program. The ADR program must be available during both the pre-complaint process and the formal complaint process.

Relationship to Other Dispute Resolution Procedures

This policy statement replaces the Interim Statement of Policy on Alternative Dispute Resolution published in the **Federal Register** on November 15, 2000. It does not supersede collective bargaining agreements or other statutory, regulatory, or contractual dispute resolution procedures, or military disciplinary processes. ADR is intended to supplement, not replace, existing procedures.

No Creation of Rights

ADR is voluntary. The choice of when and how to use ADR is within the discretion of the Department's Operating Administrations and Secretarial offices, and all parties must agree. This statement of policy does not create any right to judicial review involving the compliance or noncompliance with the statement. In addition, the statement does not obligate the Department to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, or to alter any existing delegation of settlement or litigation authority.

Issued in Washington, DC on June 3, 2002.

Norman Y. Mineta,

Secretary of Transportation.

Appendix—ADR Considerations

A decision to use ADR may be made before or after a dispute arises. Several factors should be considered in making that decision. Some factors may favor the use of ADR while others may weigh against it. Although not intended as an exhaustive list of factors, the Department has determined that ADR may be helpful in resolving a particular dispute where one or more of the following factors are present:

1. *Identifiable Parties.* There is an identifiable group of constituents with interests (the parties) so that all reasonably foreseeable interests can be represented.
2. *Good Faith.* The parties are willing to participate in good faith.
3. *Communication.* The parties are interested in seeking agreement, but poor communication or personality conflicts between the parties adversely affect negotiations.
4. *Continuing Relationship.* A continuing relationship between the parties is important and desirable.
5. *Issues.* There are issues that are agreed to be ripe for a negotiated solution.
6. *Unrealistic View of the Issues.* The parties' demands or views of the issues are unrealistic. A discussion of the situation with a neutral may increase the parties' understanding and result in more realistic alternatives and options.
7. *Sufficient Areas of Compromise.* There are sufficient areas of compromise to make ADR worthwhile.
8. *Expectation of Agreement.* The parties expect to agree eventually, most likely before reaching the courtroom or engaging in other adversarial processes.
9. *Timing.* There is sufficient time to negotiate and ADR will not unreasonably delay the outcome of the matter in dispute. There is a likelihood that the parties will be able to reach agreement within a fixed time. There are no statutory or judicial deadlines that are adversely affected by the process. ADR may result in an earlier resolution of the dispute.
10. *Resources.* The parties have adequate resources (budget and people) and are willing to commit them to the process.

While many of these factors may apply to agency rulemaking, there may be some variation in the consideration. For example, with regard to ''Expectation of Agreement,'' the consideration may be that all affected interests recognize that there is a problem that must be solved and that Federal regulation is the appropriate response. Furthermore, under the Negotiated Rulemaking Act, the head of the agency would determine whether negotiated rulemaking is in the public interest and would consider several factors concerning the parties, the timing, the costs, and the issues. See 5 U.S.C. 561.

There are also factors that suggest that ADR should not be used. The Administrative Dispute Resolution Act of 1996 provides factors that suggest that ADR is inappropriate or may not be productive in a particular dispute resolution proceeding. See 5 U.S.C. 572.

[FR Doc. 02–14692 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular (AC) 25.981–1B, Fuel Tank Ignition Source Prevention Guidelines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed revision to advisory circular.

SUMMARY: The Federal Aviation Administration invites public comment on a proposed revision to Advisory Circular 25.981–1B, Fuel Tank Ignition Source Prevention Guidelines. The revision provides updated guidelines for demonstrating compliance with the certification requirements for preventing ignition sources within the fuel tanks of transport category airplanes.

DATES: Comments must be received on or before September 10, 2002.

ADDRESSES: You should send your comments on the proposed revision to the Federal Aviation Administration, Attention: Mike Dostert, Propulsion/Mechanical Systems Branch, ANM–112, Transport Directorate, Aircraft Certification Service, 1601 Lind Ave SW., Renton, WA 98055–4056. You may also submit comments electronically to: *mike.dostert@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Dostert at the above address, telephone (425) 227–2132, facsimile (425) 227–1320, or e-mail *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular Revision?

You may obtain an electronic copy of the draft advisory circular identified in this notice at the following Internet address: *http://www.faa.gov/certification/aircraft/air_index.htm.*

- Click on ''Advisory Circulars'';
- At the bottom of the next page, click on ''Related Links'';
- On the next page, click on ''Draft Advisory circulars''.
- On the next page, click on ''Open for Comment''.

If you do not have access to the Internet, you may request a copy by contacting Mike Dostert at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Draft Advisory Circular?

You are invited to comment on the proposed advisory material by submitting written comments, data, or views. You must identify the title of the AC and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

On May 7, 2002, the Federal Aviation Administration (FAA) published Amendment 25–102 to 14 CFR part 25 in the **Federal Register** (66 FR 23086). That amendment requires design approval holders of certain turbine-powered transport category airplanes to submit substantiation to the FAA that the design of the fuel tank system of previously certificated airplanes precludes the existence of ignition sources within the airplane fuel tanks. The rule also requires the affected design approval holders to develop specific fuel tank system maintenance

and inspection instructions for any items in the fuel tank system that are determined to require repetitive inspections or maintenance, to assure the safety of the fuel tank system. In addition, the rule requires certain operators of those airplanes to incorporate FAA-approved fuel tank system maintenance and inspection instructions into their current maintenance or inspection program.

In addition to the rule changes adopted by amendment 25–102, the FAA also developed advisory material to supplement the rule changes. That advisory material was issued on April 18, 2001, as Advisory Circular (AC) 25.981–1B and AC 25.981–2. The FAA now announces the availability of a revised version of AC 25.981–1B for public comment.

The revised advisory material, AC 25.981–1C, provides guidance on how to substantiate that ignition sources will not be present in airplane fuel tank systems following failures or malfunctions of airplane components or systems. Also included is guidance for developing any limitations for the Instructions for Continued Airworthiness that may be generated by the fuel tank system safety assessment identified in amendment 25–102.

Since issuance of AC 25.981–1B, the FAA has received a number of comments and requests for additional guidance from users of the AC and has developed the revised AC to address these issues. Changes to the AC include:

- Clarification of the definition of filament heating energy levels,
- A new paragraph addressing electrostatics,
- A new paragraph describing considerations for establishing minimum wire separation distances,
- Discussion of use of silver inside fuel tanks,
- Additional guidance regarding spaces adjacent to fuel tanks
- New guidance on considerations for electrical bond redundancy, self bonding couplings, bond integrity checks, bond corrosion and integrity, and definition of major components.

In addition, several portions of the AC have been reorganized to present the material in a more useable form. Revised text is highlighted in yellow for ease in identifying changes from the previous version (AC 25.981–1B). You may also review the previous version at the Internet address provided earlier in this document under the heading, ''How do I obtain a copy of the proposed advisory circular revision?''

Issued in Renton, Washington, on May 30, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–14756 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2002–12426]

Draft Advisory Circular 93–1, Reservations for Unscheduled Flights at High Density Traffic Airports; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of draft advisory circular and request for comments; correction.

SUMMARY: This document contains a correction to the notice, published in the **Federal Register** on June 3, 2002 (67 FR 38305). That notice requests comments on Advisory Circular, ''Reservations for Unscheduled Flights at High Density Traffic Airports.'' That advisory circular would harmonize and clarify procedures currently in the Aeronautical Information Manual and the Aeronautical Information Publication, update methods of obtaining reservations to include a new web-based application, discontinue use of telephone modem access, provide for an increase in the number of hours in advance of operation that reservations may be made, and reflect recent statutory changes affecting operations at Chicago O'Hare International Airport.

FOR FURTHER INFORMATION CONTACT: Diane Crean, (202) 267–3538.

Correction of Publication

In the notice FR Doc. 02–13820, beginning on page 38305 in the **Federal Register** issue of June 3, 2002, make the following corrections:

1. On page 38305, in column 1, in the heading section, beginning on line 4, include the docket number to read, ''[Docket No. FAA–2002–12426''.

2. On page 38305, in column 1, in the **ADDRESSES** section, beginning on line 4, correct ''Docket No. FAA–2002–XXXX'' to read ''Docket No. FAA–2002–12426''.

3. On page 38305, in column 2, in the Comments Invited section, beginning on line 17, correct ''Comments to Docket No. FAA–2002–xxxx'' to read ''Comments to Docket No. FAA–2002–12426''.

Issued in Washington, DC on June 4, 2002.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 02–14691 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Issue a Release of Obligations on Surplus Property at Elmira-Corning Regional Airport, Elmira, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of the proposed release of 13 parcels of land, totaling approximately 21.1 acres, at Elmira-Corning Regional Airport, to allow their sale to the New York State Department of Transportation (NYSDOT) for the construction of a full-serve cloverleaf interchange at Kahler Road/NYS Route 17, as part of the Interstate Highway designation of Route 17.

Eleven of the subject 13 parcels of airport property were acquired between 1959 and 1981, with federal funding participation through the Airport Improvement Program (AIP), and its predecessor, the Airport Development and Planning Program (ADAP). The 2 other parcels were acquired by the Chemung County, the owner of the airport, without federal funding participation.

FAA's action is to release theland parcels from the deed provisions requiring aeronautical use of the property. These properties are not needed for current airport use, nor will they be needed for any future aeronautical use, based on the Elmira-Corning Regional Airport Layout Plan.

The NYSDOT will purchase the 21.1 acres from Chemung County at the Fair Market Value of $464,650. Chemung County will use these funds for the maintenance, operation and capital development of the Elmira-Corning Regional Airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before July 12, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600

Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Ann Clarke, Airport Manager, at the following address: Ms. Ann L. Clarke, Airport Manager, Elmira-Corning Regional Airport, Suite 1, 276 Sing Sing Road, Horseheads, New York 14845.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Road Aviation Investment and Reform Act for the 21st Century, Pubic law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Garden City, New York on May 22, 2002.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 02–14690 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Seven Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on seven currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0008, Operating Requirements: Domestic, Flag, and Supplemental Operations. Title 49 U.S.C. 44702, empowers the Secretary of Transportation to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom such certificates are issued. Each operator seeking to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of 14 CFR part 121. The FAA will use the information it collects and reviews to insure compliance and adherence to regulations and, if necessary, to take enforcement action on violations. The current estimated annual reporting burden is 1,278,856 hours.

2. 2120–0014, Procedures for Non-Federal Navigational Facilities FAR Part 171. The non-Federal navigation facilities are aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public. FAR Part 171 describes procedures for receiving permission to install a facility and requirements to be fulfilled to keep it in service. These requirements include inspection and periodic maintenance. These tasks and any other repair work done to these facilities is recorded in on-site logs, copies of which are sent to the regional office. The current estimated annual reporting burden is 29,516 hours.

3. 2120–0535, Antidrug Program for Personnel Engaged in Specified Aviation Duties. 14 CFR Part 121, Appendix I and J, require specified aviation employers to implement and conduct FAA-approved antidrug programs. To monitor program compliance, institute program improvements, and anticipate program problem areas, the FAA receives drug test reports from the aviation industry. The current estimated annual reporting burden in 38,679 hours.

4. 2120–0597, Application for Employment and the Federal Aviation Administration. Under the authority given by Public Law 104–50, the FAA has developed and implemented its own system for evaluating and hiring new personnel. The information collected is used to help determine the qualifications of potential new FAA hires. The current estimated annual reporting burden is 75,000 hours.

5. 2120–0600, Training and Qualification Requirements for Check Airmen and Flight Instructors. Some experienced pilots who would otherwise qualify as flight instructors or check airmen but who are not medically eligible to hold the requisite medical certificates, cannot perform flight instructor or check airmen functions, even in simulators. This rule establishes separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. The information collected is used by the FAA to assure that these check airmen and instructors maintain the high qualification standards required to perform their safety functions. The current estimated annual reporting burden is 13 hours.

6. 2120–0604, Aviation Medical Examiner Program. The information collected is used to determine applicants' professional and personal qualification to become an Aviation Medical Examiner (AME). Physicians who respond are prospective AMEs. The current estimated annual reporting burden is 225 hours.

7. 2120–0649, Financial Responsibility Requirements for Licensed Reentry Activities. The information to be collected supports the FAA in determining the amount of required liability insurance that is needed for a reentry operator after examining the risks associated with a reentry vehicle, its operational capabilities, and its designated reentry site. The current estimated annual reporting burden is 1,566 hours.

Issued in Washington, DC, on June 6, 2002.

Judith D. Street,

Federal Aviation Administration Information Collection Clearance Officer, APF–100.

[FR Doc. 02–14754 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–39]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. 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 on this notice nor the inclusion or emission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments or petitions received must identify the petition docket number involved and must be received on or before July 2, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXX at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Pat Siegrist (425–227–2126), or Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056, or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 6, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12350.

Petitioner: Bombardier Aerospace.

Section of 14 CFR Affected: 14 CFR 25.813.(e).

Description of Relief Sought: To permit installation of a hinged door between passenger compartments on the BD–700–1A10 Global Express corporate airplane.

Docket No.: FAA–2002–12349.

Petitioner: Bombardier Aerospace.

Section of 14 CFR Affected: 14 CFR 25.815.

Description of Relief Sought: To allow relief from the aisle width requirement at the forward inboard aft-facing seat on the BD–700–1A10 Global Express corporate airplane. A seat placard will state not for use during taxi, takeoff, or landing.

Docket No.: FAA–2002–12351.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought: To permit certification compliance for the hydraulic systems on Boeing Models 747–400 and –400F series airplanes with increased maximum takeoff weight of 910,000 lbs., by (i) similarity to the previously tested hydraulic systems on the Boeing Models 747–100 and –400 for the unchanged parts of the installations, and (ii) conducting proof pressure test at the pressure relief valve setting (3350 psig) in lieu of the 1.5 times design operating pressure (4500 psig) for the changed parts of the installations.

Docket No.: FAA–2002–12399.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought: To permit Cessna to equip Cessna Model 750 Citation X aircraft with multiple-occupancy side-facing couches that are not designed to include the general occupant protection requirement of § 25.785(b).

[FR Doc. 02–14689 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on Tuesday, June 25, 2002, at 1 p.m. Central Standard Time (CST).

ADDRESSES: Persons in the Fort Worth, Texas area can participate in the teleconference in the FAA Regional Office, ASW–7 Conference Room 1, 6th Floor, 2601 Meacham Blvd., Fort Worth, Texas 76137. Those people in the Washington, DC metropolitan area can come to the FAA headquarters building, 800 Independence Ave., Conference Room in Room 810, Washington, DC to access the teleconference.

FOR FURTHER INFORMATION CONTACT: Mary Ann Phillips, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5124, e-mail *mary.ann.phillips@faa.gov.*

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). The agenda will include approval of requesting legal and economic drafting support for the following two notices of proposed rulemaking (NPRMs):

- Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure.
- Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure.

Attendance is open to the public but will be limited to the space available on the telephone conferencing system. The telephone number for participating in the teleconference will be available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair at least 7 days prior to the meeting. Copies of the NPRMs that will be presented may be obtained by contacting Mary Ann Phillips at (817) 222–5124 or by e-mailing her at: *mary.ann.phillips@faa.gov.*

If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, on June 4, 2002.

James A. Grigg,

Acting Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–14753 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order TSO–C RIPS, Recorder Independent Power Supply

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 draft Technical Standard Order (TSO) C RIPS, Recorder Independent Power Supply (RIPS). The draft TSO–C RIPS prescribes the minimum performance standard (MPS) that a RIPS must meet in order to bear the TSO number on its identification plate. The RIPS is to be used to provide emergency power to a cockpit voice recorder or combination voice/data recorder.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, ATTN: Bobbie J. Smith, Room 815, 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, Program Support Specialist, AIR–120, Aircraft Certification Service, Aircraft Engineering Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION

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 on the proposed TSO may be examined, before and after the comment 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 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Since 1983, there have been 52 accidents and incidents in which data was not available from either the cockpit voice recorder or the flight data recorder or both. In each of the incidences the non-availability of data was due to interruption of electrical power following engine failure, generator failure, or crew action.

Recent innovation in recorder and power supply technology have made it possible to provide an independent power source that would provide sufficient power to operate a solid-state flight recorder for 10 minutes. As such, the FAA proposes the availability of recorded voice and data information throughout the flight up until a brief period (10 minutes) after loss of electrical power. Such data would be beneficial to accident investigators in rapidly assessing the events leading up to and possibly the cause of accidents and incidents. Such rapid assessment would provide the information that the FAA and aircraft industry requires in order to implement any necessary corrective action.

How To Obtain Copies

A copy of the proposed TSO may be obtained via the information contained in section titled **FOR FURTHER INFORMATION CONTACT**, or the Internet at *http://www.faa.gov/certification/aircraft/TSOA.htm.*

Issued in Washington, DC, on June 6, 2002.

Kim K. Smith,

Acting Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–14755 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Innovative Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Announcement of grants to support innovative and effective projects designed to increase seat belt use rates.

SUMMARY: NHTSA announces the fourth year of a grant program under Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) to provide funding to States for innovative projects to increase seat belt use rates. Consistent with prior years, the goal of this program is to increase seat belt use rates across the Nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. Selection of these Innovative Grants will be determined based on criteria, as specified in this Federal Register Notice. Funds will be tracked in a fashion similar to other highway safety grants, using the Grant Tracking System (GTS). This Notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in fiscal year (FY) 2003. Detailed application instructions are provided in the Application Contents and Grant Criteria section of this Notice. The Section 157 Innovative Grants will be awarded to States that comply with the criteria set out in the Application Contents and Grant Criteria Section of this Notice.

DATES: Applications must be received by the appropriate NHTSA Regional Office, on or before August 15, 2002.

ADDRESSES: Each State must submit its application to the appropriate NHTSA Regional Office, to the attention of the Regional Administrator, on or before August 15, 2002. Addresses of the ten Regional Offices are listed in Appendix A.

FOR FURTHER INFORMATION CONTACT: Questions relating to this grant program should be directed to Janice Hartwill-Miller, Occupant Protection Division (NTS–12), Office of Traffic Injury Control Programs, NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by e-mail at *jhartwill-miller@nhtsa.dot.gov,* or by phone at (202) 366–2684. For legal issues, States should contact Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30,

NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by phone at (202) 366–1834. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, was signed into law on June 9, 1998. Section 1403 of TEA–21 contained a safety incentive grant program regarding seat belt usage rates in the States. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Section 1403 provided, beginning in FY 2000, any funds remaining unallocated in a fiscal year after determinations and findings related to seat belt use rates have been made are to be used to ''make allocations to States to carry out innovative projects to promote increased seat belt use rates.'' Today's Notice solicits applications for funds that will become available in FY 2003 under this provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates statewide and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans that are eligible to receive allocations and was further directed to ''ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations.'' Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan should not be less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, for FY 2003. This description includes the requirements regarding contents of a State's proposal and the elements, procedures and criteria the agency will use to determine which proposals are eligible for award, proposed activities that will not be approved for funding, and the amount of each award.

These application and award procedures are built upon the experience of the past several years. They are designed to make the process as streamlined as possible, and at the same time, to ensure that programs with the maximum potential for impact receive adequate funding to significantly increase seat belt usage. The award criteria have been designed to support those States proposing to carry out intensified, statewide programs of high visibility enforcement of their seat belt laws. Experience from many States has shown that such programs can substantially increase seat belt use rates in a very short period of time and such gains can be sustained.

Objective of This Grant Program

The objective of this grant program is to increase statewide seat belt use rates by supporting strategies and activities with the greatest potential for impact.

To be considered for an award under this program in FY 2003, the State's proposed effort must be based on a core component of highly visible enforcement of its seat belt use law. The application must include an intensified *Enforcement Plan,* which assures participation in at least two enforcement mobilizations, each of which is at least two weeks in duration and includes the participation of local law enforcement agencies covering at least 85 percent of the State's population. The application also must include a comprehensive *Public Information and Education (PI&E) Plan* with a clear enforcement message designed to make the public aware of the proposed enforcement effort. It is strongly encouraged that States include a paid media component in this PI&E Plan. The State must be willing to submit its media materials (i.e., scripts, storyboards, etc.) and media buy plans for NHTSA review, prior to implementing the project. NHTSA will provide for technical assistance to be available to States for the development and implementation of their PI&E plan. The application must also include an *Outreach Plan* that specifies the high-risk segments of the community that will be targeted and how they will be reached and the application must include an *Evaluation Plan* that describes how the State intends to evaluate the impact of its campaign. At a minimum, the evaluation plan must provide for observational surveys of seat belt use, shortly before and after the Operation ABC national mobilization which will take place in May 2003. It is strongly recommended that such observations be conducted before and after the Thanksgiving Day mobilization as well. Due to budget and weather constraints in some States, this is not a requirement. In addition, at least the June 2003 post-mobilization observational survey must be the full (NHTSA approved) statewide seat belt observational survey. Finally, the State's proposed enforcement, PI&E, and outreach efforts must be applied statewide. When the elements described above have been implemented in an intense and coordinated manner, they have frequently resulted in significant increases in statewide seat belt usage rates. Accordingly, these elements (i.e., enforcement, PI&E, outreach and evaluation) are essential for a State's proposal to be considered for award.

States submitting a proposal designed to increase seat belt use in only a limited number of jurisdictions within a State; one that lacks a strong statewide enforcement effort or a clear enforcement message in its PI&E plan; one that does not have an adequate outreach plan to ensure public support for the program; or one that does not include an evaluation component designed to measure statewide changes in seat belt usage at least before and after the May 2003 Operation ABC National mobilization will not be eligible for a grant award.

Special Provisions for Evaluation and Media

NHTSA will reserve approximately $4 million from the FY 2003 funds to conduct national observational surveys to measure changes in seat belt use before and after at least one mobilization in calendar year (CY) 2003, to conduct pre- and post-mobilization telephone surveys, nationwide and in States; to assess changes in public awareness and attitudes regarding enforcement mobilizations; and to provide technical evaluation assistance to the States. As a condition of award, States must agree to provide the results of their own pre- and post-mobilization observational surveys to NHTSA, in a timely fashion, to facilitate NHTSA's overall evaluation of the effectiveness of the FY 2003 grant program. NHTSA will share the results of its telephone surveys with the States. These data will provide information regarding the extent to which the public was aware of the enforcement, PI&E, and outreach efforts in each State, thus assisting statewide evaluation efforts. States may also propose to conduct additional evaluation activities (e.g. conducting motorist surveys at DMVs or licensing centers). NHTSA will aid the States in such efforts wherever possible, such as by tabulating and analyzing the results of motorist/DMV surveys. Should NHTSA select States to conduct certain in-depth evaluations (e.g. DMV surveys), it is expected that such States

will cooperate with NHTSA to carry out these activities.

NHTSA will reserve an additional $1 million to provide technical assistance to the States and support their efforts to develop and implement their enforcement-focused media efforts that support the National Seat Belt Enforcement Mobilizations during CY 2003.

Award of Funds and Funding Levels

Every effort will be made to fund as many States as possible. States will receive an award of grant funds under this program if they meet the requirements described in this notice and, in particular, if they adequately provide for the four essential elements (enforcement, PI&E, outreach and evaluation) described in this notice in the ''Application Contents and Grant Criteria'' section.

In FY 2002, the amount of grant funds that each State received under the Section 157 Innovative Grant program was based on a formula. A formula will not be used in FY 2003. Instead, the funding amount each State receives will be based on the extent to which the agency determines that the activities planned will directly and adequately support the four essential program elements described in the ''Application Contents and Grant Criteria'' section of this notice and that the activities planned have potential to make a significant impact on seat belt use.

To maximize the potential for impact, it is anticipated that no State will receive a grant award of less than $350,000, subject to the availability of funds. This $350,000 minimum was derived based on experience gained by the agency over the past 3 years of this Innovative Grant program. It reflects the agency's estimate of the minimum resources needed, in smaller or less populated States, to implement an effective statewide seat belt program that includes intensive enforcement and media, appropriate outreach, and a basic level of evaluation.

However, we expect that most States will receive in excess of this minimum amount. When developing their proposals, States are encouraged to consider their level of effort and budget in FY 2002 and whether any significant new activities are being proposed in this fiscal year. For example, if last year's effort did not include paid media and the State believes that paid media would enhance its FY 2003 effort, the State should include paid media in the proposal for this year and adjust its budget accordingly. The agency encourages States to consider the inclusion of paid media in their applications, based on the evidence it has received of the significant impact paid media had on public awareness in South Carolina in the Fall of 2000 and during the eight-state mobilization that took place in the southeast region of the country (NHTSA's Region IV) surrounding Memorial Day 2001.

However, to the extent that the agency determines that proposed activities do not directly or adequately support the four essential program elements (i.e., enforcement, PI&E, outreach, and evaluation) or that they do not have substantial impact potential, these activities will not be recommended for funding.

Allowable Uses of Federal Funds

In FY 2003, the Section 157 Innovative Grant funds will be tracked in a fashion similar to other highway safety grants, through the Grant Tracking System. Funds provided to a State under this grant program shall be used to carry out the approved activities described in the State's application for which the grant is awarded. In addition, allowable uses of Federal funds shall be governed by 49 CFR Part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and the cost principles contained in OMB Circular A–87.

Eligibility Requirements

Only the 50 States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of the application package to the appropriate NHTSA Regional Office (see Appendix A) to the attention of the Regional Administrator.

Applications must be typed on one side of the page only and adhere to the requirements of the Application Contents and Grant Criteria Section below. Appendix B provides a checklist to facilitate the preparation of the proposals. Only application packages submitted by a State's Governor's Representative for Highway Safety and received in the appropriate Regional Office on or before August 15, 2002 will be considered.

Application Contents and Grant Criteria

To be eligible for a grant under Section 157, a State must submit an application that describes and/or documents all of the following:

1. *Introduction*—A brief description of the State's geographic and demographic population distribution, and any other unique characteristics (e.g., how the seat belt use rate varies within the State by vehicle type or by ethnic populations) that are relevant to the State's plan to increase seat belt use. The introduction should also include a statement that describes the State's current usage rates, along with a discussion of recent trends and goals for seat belt use in CY 2003, and any available information to explain recent progress or lack of progress in increasing seat belt usage. 2.

2. *Certifications*—A signed statement by the State that: (i) It will use the funds awarded under this grant program exclusively to implement a statewide seat belt program in accordance with the requirements of Section 157(b) of Public Law 105–178 (TEA–21); (ii) it will administer the funds in accordance with 49 CFR part 18 and OMB Circular A–87; (iii) it will provide pre- and post-mobilization observational survey data on seat belt use, for at least the May 2003 Operation ABC National Mobilization to NHTSA within one month following the collection of such data; (iv) it will provide to the NHTSA Regional Administrator, no later than 15 months after the grant award, a report of activities carried out with grant funds and accomplishments to date; and (v) it will comply with all applicable laws and regulations, financial and programmatic requirements.

3. *Required Program Elements*

(a) *High-Visibility Seat Belt Enforcement Plan*—Describe the State's plan for its intensified enforcement activities which must include all of the following strategies:

(1) Conduct a minimum of two highly visible seat belt enforcement mobilizations, each two-weeks in duration, including a mobilization from May 19 to June 1, 2003, and another from November 18 to December 1, 2003. If other time frames are proposed, the State must provide adequate justification for why these time frames are more crucial than those listed above. Because of the documented impact of enforcement-based approaches, applications based on non-enforcement approaches to increase seat belt use will not be eligible for award;

(2) Provide assurance that every effort will be made to enlist the participation in the mobilization of local law enforcement agencies covering at least 85 percent of the State's population. Documentation of such effort should include the proposed plan for recruiting

State and local law enforcement agency partners and any letters of commitment already secured; and

(3) Provide a description of the enforcement strategies the State plans to employ (e.g., checkpoints, saturation patrols or enforcement zones.) Highly visible and intensive enforcement approaches have frequently been found to increase seat belt usage. Thus, States are encouraged to identify and use the most visible and intensive approaches available to them. Proposals that do not include intensified, highly visible enforcement approaches will not be considered for award.

(b) *Comprehensive Public Information and Education Plan*—Describe the State's plan for a statewide public information and education (PI&E) strategy to focus public attention on the intensified enforcement effort. Each of the following elements must be included and described:

(1) Conduct a minimum of 4 weeks of public information and education in support of each mobilization. It is assumed that PI&E portions of these mobilizations will occur from May 5 to June 1, 2003, and from November 4 to December 1, 2003. If other time frames for the overall PI&E effort are proposed, the State must supply adequate justification;

(2) Describe the proposed earned and donated media plan to be employed during each of the 4-week periods;

(3) Describe the proposed paid media plan to be employed. It is recommended that paid media be considered for the second and third weeks of each 4-week PI&E period (i.e., May 12 to May 25, 2003, and November 11 to November 24, 2003). Include a brief description of the State's proposed paid media plan, including its media buy, what specific populations or areas will be targeted, and how the State plans to reach the targeted audience, presumably those with the lowest usage rates. The State should also describe the proposed media mix, including radio, TV, billboards, etc. If the State proposes a shorter (e.g., one week) or different (e.g., first and second of the 4 weeks) paid media time frame, or proposes employing no paid media at all, the application should include a justification for that approach. Media and media buy plans must also be submitted for NHTSA review;

(4) Provide assurance that media and media buy plans will be submitted to NHTSA for review, prior to production and purchase;

(5) Describe how messaging (earned, donated, and paid) will be focused primarily on the enforcement effort; any proposed media effort that does not include a focus on enforcement messages will not be accepted; and

(6) Include a discussion of proposed efforts to produce and disseminate ads (paid and public service) that will target low belt use groups or low belt use areas; include a description of plans to produce such ads in languages other than English, as appropriate.

(c) *Outreach Plan*—Describe the State's Outreach plan, which must include all of the following:

(1) Specify which segments of the community, (e.g. rural, teen, and diverse groups) will be the targets of the outreach effort;

(2) Specify which organizations, networks and other intermediaries will be used to reach the targeted audiences; and

(3) Specify how the outreach effort will build support for the mobilizations.

(d) *Evaluation*—The State must provide for pre- and post-mobilization observational surveys of seat belt use for at least the Memorial Day, 2003 mobilization (i.e., late April and early June, 2003). It is strongly recommended that such observations be conducted before and after the Thanksgiving Day mobilization as well. Due to budget and weather constraints in some States, this is not a requirement. The pre-survey for the Memorial Day 2003 mobilization may either be the full (NHTSA-approved) statewide seat belt observational survey or ''sub-sample survey'' which uses a stratified sample of observational sites included in the statewide survey. These sites should be selected to be as representative of the State as possible, e.g., mix of rural/urban; various socioeconomic strata, etc. The post Memorial Day survey must be the full (NHTSA approved) statewide survey. The State must describe how, where, and when it will conduct the observational surveys supported by this grant. The application must also include a description of how the evaluation effort will be implemented and managed. NHTSA recognizes that many States already have comprehensive efforts underway to evaluate their entire occupant protection programs. States are encouraged to integrate the evaluation of this program with those broader efforts. NHTSA is prepared to offer technical assistance for evaluation, including the provision of survey protocols and instruments to any State, upon request, and to the extent possible, by providing data analysis support (particularly for DMV motorist surveys).

4. *Budget*—Each State's application must include a budget, using the format in Appendix C, with the following categories:

a. *Program Management and Coordination*—Include the estimated total cost for personnel.

b. *Enforcement*—Estimate the funds devoted to enforcement programs (include sub-grants to law enforcement agencies, mini-grants, etc.).

c. *Public Information and Education*—Estimate the funds assigned to each key element of the PI&E component, which may or may not include the following:

1. Public relations consultants;
2. Campaign events;
3. Development of ads/PSAs;
4. Purchase of ads;
5. Materials and incentives; and
6. Other PI&E costs.

d. *Outreach*—Estimate the funds devoted to making contact with groups, networks, associations and other organizations that can be enlisted to help foster support for the high visibility enforcement effort among diverse segments of the State's population.

e. *Evaluation*—Include the estimated cost for conducting pre- and post-mobilization observational surveys of seat belt use for *at least* the May 2003 mobilization.

Note: The State has the option of proposing more in-depth evaluation, including observational surveys before and after other mobilizations, as well as telephonic and other forms of awareness and attitudinal surveys.

The State shall include in the budget for FY 2003 grant funds information on prior-year innovative grant funds. Specifically, the State shall itemize how much of these prior year funds have not yet been expended and how much will be re-allocated to support the FY 2003 program. States are reminded that all remaining FY 2000, Section 157 Innovative Grant funds must be spent by the end of FY 2003 (i.e., by September 30, 2003).

Reporting Requirements and Deliverables: Following award, each successful applicant will be responsible for providing the following reports:

1. *Quarterly Reports*—The quarterly reports should include a summary of enforcement and other activities and accomplishments for the preceeding period, significant problems encountered or anticipated, a brief itemization of expenditures made during the 3-month reporting period, and proposed activities for the upcoming reporting period. Please note: Many States will be continuing to spend funds already awarded during the first 3 years of this Section 157 Innovative Grant program after these fourth year funds are awarded. NHTSA does not

intend nor desire that States submit separate Quarterly Reports for the various funding years. Activities carried out during a reporting period under all four years of funding should be documented in the same report. However, the State should include a tabulation of how much funds were expended during the reporting period from each year. Also, during the first 2 years, a number of States modified their grants to change from Quarterly to Monthly reporting. Those States should continue to submit Monthly Reports during the fourth year, at least until all first and second year funds have been spent. Any decisions and actions required in the upcoming program period should be included in the report.

2. *Final Report*—A Final Report that includes a summary of the impact of the year-long (CY 2003) program. It should include a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit three copies of the Final Report to the Regional Office within fifteen months following grant award.

Application Review Procedures

All applications will be reviewed by an Evaluation Committee to ensure that the application meets all of the requirements contained in this notice, including the requirements contained in the ''Application Contents and Grant Criteria'' section of the Notice. This evaluation process may include submission of technical or program questions from the evaluation committee to the applicants. In addition, the Evaluation Committee will determine whether the activities and identified resources included in the proposals will directly and adequately support the four essential program elements described in the ''Application Contents and Grant Criteria'' section of this notice and whether the proposed activities have potential to make a significant impact on seat belt use. To the extent that the Evaluation Committee determines that proposed activities will not directly and adequately support the four essential program elements (enforcement, PI&E, outreach, and evaluation) or that they will not have substantial impact potential, such activities will not be recommended for funding.

More specifically, the Evaluation Committee's review will assess: (a) The comprehensiveness, intensity, feasibility, and potential impact of the proposed approach for *each* of the required program elements (i.e. enforcement, PI&E, outreach, and evaluation); (b) the extent to which adequate funding (from a variety of sources) has been identified to carry out the proposed program elements; and (c) the extent to which the funds requested in the grant proposal are allocated to the required program elements and are not diverted to activities with less potential for impact. Activities within any proposal that are determined by the evaluation team not to have significant potential for increasing seat belt usage in the State will not be approved for funding. As previously stated, NHTSA will make every effort to maximize the number of awards made. It is anticipated that awards will be made in November 2002.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

Appendix A

NHTSA Regional Offices

Region I (CT, MA, ME, NH, RI, VT)

Volpe National Transportation Systems Center, 55 Broadway, Kendall Square, Code 903, Cambridge, MA 02142

Region II (NJ, NY, PR)

222 Mamaroneck Avenue Suite 204, White Plains, NY 10605

Region III (DE, DC, MD, PA, VA, WV)

10 South Howard Street, Suite 4000, Baltimore, MD 21201

Region IV (AL, FL, GA, KY, MS, NC, SC, TN)

Atlanta Federal Center, 61 Forsyth Street, SW, Suite 17T30, Atlanta, GA 30303

Region V (IL, IN, MI, MN, OH, WI)

19900 Governors Drive, Suite 201, Olympia Fields, IL 60461

Region VI (AR, LA, NM, OK, TX)

819 Taylor Street, Room 8A38, Fort Worth, TX 76102–6177

Region VII (IA, KS, MO, NE)

901 Locust Street, Room 466, Kansas City, MO 64106

Region VIII (CO, MT, ND, SD, UT, WY)

555 Zang Street, Room 430, Lakewood, CO 80228

Region IX (AZ, CA, HI, NV)

201 Mission Street, Suite 2230, San Francisco, CA 94105

Region X (AK, ID, OR, WA)

3140 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174

Appendix B

Application Checklist; Section 157 Innovative Grant Application for FY 2003

Applying State: _____

Reviewer: _____

Indicate whether the application adequately addresses each listed item.

Item No.	YES	NO	Does the application adequately . . .
Intro. 1.1			Describe the State's geographic and demographic population distribution and other unique characteristics relevant to the State's plan?
Intro. 1.2			Describe the State's usage rates and recent trends, along with discussion of factors contributing to recent progress or lack of progress?
Intro. 1.3			Describe the seat belt use increase expected to be achieved by means of the proposed activities?
Certs. 2.1			Certify that the State will use the proposed funds exclusively to implement a statewide seat belt program in accordance with the requirements of Section 157(b)?
Certs. 2.2			Certify that the State will administer the proposed funds in accordance with CFR Part 18 and OMB Circular A–87?
Certs. 2.3.1			Certify that the State will provide pre- and post-mobilization observational survey data on seat belt use, for at least the May 2003 Operation ABC national mobilization, to NHTSA, within one month following the collection of such data?
Certs. 2.3.2			Certify that at least the post-May mobilization survey will be a full NHTSA-approved survey?

Item No.	YES	NO	Does the application adequately . . .
Certs. 2.4			Certify that the State will provide a report on grant activities and accomplishments to the NHTSA Regional Administrator no later than 15 months after grant award?
Certs. 2.5			Certify that the State will comply with all applicable laws and regulations, financial and programmatic requirements?
Enforce. 3.1			Document the State's intent to conduct a minimum of two, two-week long, high visibility seat belt enforcement mobilizations, including May 19–June 1, 2003, and November 18–December 1, 2003?
Enforce. 3.1.1 (if NO to 3.1)			Supply justification for different mobilization time frames?
Enforce. 3.2			Describe a plan for recruiting participation in the mobilizations by local law enforcement agencies targeting at least 85% of the State's population?
Enforce. 3.3			Describe proven effective enforcement strategies the State plans to use for the mobilizations?
Enforce. 3.3.1 (if YES to 3.3)			Include *proven* enforcement strategies? • Checkpoints? • Saturation Patrols? • Enforcement Zones? (check all that apply)
Enforce. 3.3.2 (if NO to 3.3)			Describe some highly visible enforcement strategy or strategies that the State plans to use, other than checkpoints, saturation patrols or enforcement zones?
PI&E 4.1			Document the State's intent to conduct a minimum of two, four-week periods of PI&E in support of seat belt enforcement mobilizations, including May 5–June 1, 2003, and November 4–December 1, 2003?
PI&E 41.1 (if NO to 4.1)			Supply justification for different PI&E time frames?
PI&E 4.2			Describe the earned and donated media to be employed to support the mobilizations?
PI&E 4.3			Describe the paid media to be employed during the 2nd and 3rd weeks of each PI&E period, including May 12–25, and Nov. 11–24, 2003?
PI&E 4.3.1 (if NO to 4.3)			Supply justification for a different paid media schedule, or for employing no paid media at all?
PI&E 4.4 (if the application includes proposed paid media).			Describe the media buy plan that the State expects to develop?
PI&E 4.5			Assure that the State will submit its media (scripts, storyboards, etc.) and media buy plan (if any) for NHTSA's review before they are produced or implemented?
PI&E 4.6			Assure that messaging (earned, donated or paid) will be focused on the enforcement effort?
PI&E 4.7			Discuss the State's needs to produce PSAs and advertisements in languages other than English, as appropriate?
Outreach 5.1			Specify the segments, particularly diverse segments, of the community to be targeted by the outreach efforts?
Outreach 5.2			Specify the organizations, networks and other intermediaries to be used to reach the targeted segments?
Outreach 5.3			Specify how the outreach effort will build support for and reduce opposition to the enforcement mobilizations?
Evaluation 6.1			Document the State's intent to conduct pre- and post-mobilization observational surveys of seat belt use for at least the May 2003 mobilization?
Budget 7.1			Document and explain the proposed allocation of requested funds from FY 2003, and remaining funds from previous fiscal years to Program Management & Coordination, Enforcement, PI&E, Outreach and Evaluation?
Budget 7.2			Describe how the funds requested under this proposal will directly support the four critical program elements (i.e., enforcement, public information and education, outreach, and evaluation)?

Appendix C

The State shall complete the following Table, and include it in the application for the FY 2003 Section 157 Innovative grant.

	FY 2003 157 Innovative Request	Remaining FY 2001 157 Innov Grant	Remaining FY 2000 157 Innov Grant	Other funding sources*
1. Total	$_____	$_____	$_____	Specify Sources: (Total available funds not needed).
2. Total to be applied to items 3–7		$_____	$_____	$_____
3. Program Management/Coordination: • Personnel • Other	$_____	$_____	$_____	$_____
4. Enforcement	$_____	$_____	$_____	$_____
5. PI & E: • Paid Media	$_____	$_____	$_____	$_____

	FY 2003 157 Innovative Request	Remaining FY 2001 157 Innov Grant	Remaining FY 2000 157 Innov Grant	Other funding sources*
• Other				
6. Outreach	$_____	$_____	$_____	$_____
7. Evaluation	$_____	$_____	$_____	$_____
8. Difference between items 1 and 2 above**	$_____	$_____	$_____	Not applicable.

* Other funding sources include: other Federal grants, private funds, State and local funds, etc.
** In the application, the State shall provide an explanation for any values other than zero in Item 8 above.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support the Demonstration of a Model Impaired Driving Records Information System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to support the demonstration of a model impaired driving records information system and to evaluate its efficacy and effectiveness.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement to solicit support for the demonstration of a model impaired driving records information system and to evaluate its efficacy and effectiveness. NHTSA is concerned that without a current and accurate record of driver information, it is difficult for law enforcement agencies, licensing agencies, the criminal justice system, and others to make sound decisions on how to respond to and take the appropriate action against drivers demonstrating unsafe behavior on the roadways. This cooperative agreement is to support the demonstration of a model impaired driving records information system and to evaluate its efficacy and effectiveness. NHTSA solicits applicable State agencies (i.e., law enforcement agencies, the judiciary (judges, probation officers and prosecutors), Motor Vehicle Administrations or Departments of Motor Vehicles (DMVs), highway safety offices, and others, or a consortium of the above.

DATES: Applications must be received no later than July 29, 2002, at 3 p.m., Eastern Standard Time.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications must include reference to NHTSA Cooperative Agreement Program No. NTS–01–2–05088.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202) 366–9557 or by e-mail: *rwatson@nhtsa.dot.gov.* Programmatic questions should be directed to J. De Carlo Ciccel, Impaired Driving Division, NHTSA, NTS–11, 400 7th Street, SW., Washington, DC 20590, facsimile (202) 366–2766, or by e-mail: *dciccel@nhtsa.dot.gov.* Interested applicants are advised that no separate application packages exist beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The mission of the National Highway Traffic Safety Administration (NHTSA) is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes. Each year, more than 1.4 million drivers are arrested for alcohol-impaired driving in the U.S. States bear the primary responsibility for enacting impaired driving laws and enforcing, adjudicating, and imposing sanctions against offenses. The driver license and licensing process provides a basis for driver control measures. During the 1950's, all States implemented an examination with road test as a condition of obtaining a driver license. License actions have become a central component of efforts to deter drinking and driving. Driver license sanctions are now almost universally used either administratively or through the judicial system. The effects of license suspension/revocation are short and long-term. The loss of the offender's privilege to drive by suspending or revoking a license for driving while intoxicated (DWI) has proven successful in reducing drinking and driving behavior. Although vehicle-based sanctions (e.g., ignition interlock devices and the forfeiture or impoundment of offenders' vehicles) hold great promise as deterrent measures, States rely heavily on removal of the offender's license as a primary penalty for driving under the influence (DUI), because it is the most cost-effective sanction available, particularly when applied to first-time offenders.

There are also instances in some States where license withdrawal is required as a penalty for offenses that lie outside the ambit of typical motor vehicle laws (e.g., use of a motor vehicle in the commission of a felony, motor vehicle theft, discharging a firearm from a motor vehicle, committing an immoral act in which a motor vehicle was used, advocating the overthrow of the government, defacing public or private property, non-payment of child support, withdrawal from high school, and illegal use of alcohol and other drugs). Often these violations and other driver history information are not transmitted to relevant agencies within state jurisdictions or between the States. This omission hinders roadside enforcement, the identification of problem drivers, and ultimately, the safety of others.

While the transmission of this type of information is critical, it must be timely, accurate, reliable, and complete to be effective. Timely and accurate information is essential to the adjudication process. Decisions regarding licensing actions and penalties need to be based on an individual's complete driving history. Persons previously convicted of a variety of traffic offenses and violations should be sanctioned differently than those with no or otherwise minor traffic offenses. A fully developed driver history records information system for impaired driving would be a powerful tool for States to assist in developing an effective system of deterrence for the impaired driver. Yet, few States have such a system. For example, delays in reporting or exchanging information regarding the disposition of traffic citations between the courts and licensing agencies commonly last six months or longer—sufficient time for a driver to commit additional traffic offenses. ''At-risk'' drivers continue to drive virtually undetected, putting others at risk of death, injury, or loss of property.

NHTSA is concerned that without a current and accurate record of driver information, it is difficult for law

enforcement agencies, licensing agencies and others in the criminal justice system to make sound decisions on how to respond to drivers demonstrating unsafe behavior on the roadways. To correct this deficiency, NHTSA developed a model for an Impaired Driving Records Information System and an implementation guide that allows for accurate, reliable, and timely exchange and transmission of data between the law enforcement agencies, the courts, and the DMVs. In addition, model requirements identify core and essential data elements, relevant records, and performance standards to receive, store, and transmit data.

Many states have some form of a judiciary-based citation or case-based impaired driving tracking system. However, as states have increasingly enacted administrative license and vehicle sanctions for impaired driving, DMVs have taken on an increasingly important role in managing these sanctions through the driver licensing systems. With the advent of electronic citation systems and technologies that allow immediate access by patrol officers to driver license and vehicle registration information, enforcement agencies also have an increasingly important role in developing and managing an Impaired Driving Records Information System. The system includes impaired driving-related information that is collected and managed by the system's stakeholders. Key system stakeholders in all states include law enforcement agencies, the criminal justice system (i.e., judges, probation officers, and prosecutors), DMVs, and highway safety offices. Within most states, other stakeholders may include treatment and correctional agencies, which may also maintain offender-based information systems. A model was developed for implementation within and among states for use as a collective resource and to curb the installation of costly and duplicative record systems.

The project under this cooperative agreement encompasses the totality of a State's efforts to generate, transmit, store, update, link, manage, report, and retrieve information on impaired driving offenders and citations. Through the use of up-to-date technology and cooperative arrangements between the stakeholders, a *Model Impaired Driving Records Information System* provides for electronic access to driver history and vehicle information, electronic collection of data, electronic transmission of data between stakeholders, and on-line access to complete, accurate, and timely information on impaired driving cases. The system must provide access, as required, by all key stakeholders and address their needs.

Objective

The objective of this demonstration project is for States to implement a *Model Impaired Driving Records Information System* (for model requirements, see section titled: *Model Impaired Driving Records Information System Requirements*) and evaluate its efficacy and effectiveness. A *Model Impaired Driving Records Information System* enables a State to effectively perform the following functions:

(1) Appropriately identify, charge and sanction impaired driving offenders, based on their driving history;

(2) Manage impaired driving cases from arrest through the completion of court and administrative sanctions;

(3) Identify target populations and trends, evaluate countermeasures, and identify problematic components of the overall impaired driving control system;

(4) Provide stakeholders with adequate and timely information necessary to fulfill their responsibilities; and

(5) Reduce administrative costs for system stakeholders and increase system efficiencies. While this effort is directed at impaired drivers, it is understood that data on the behavior of all problem drivers will result from use of such a system.

Availability of Funds and Period of Support

A total of $1.45 million is currently available to support demonstration efforts during the first year of performance. The government anticipates the award of up to 3 cooperative agreements for a total performance period not to exceed 3 years, subject to the availability of funds. Obligation of funds for the second and third years will be accomplished under a separate action. Offerors should submit projects and associated budgets for each twelve-month cycle. Individual awards may range from $100 thousand to a maximum of $1,450,000, if only one award is made.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of each cooperative agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from other government sources and available resources as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and other (Federal, State, and local agencies) interested in a Model Impaired Driving Records Information System, and the grantee as appropriate.

4. Stimulate the transfer of information among cooperative agreement recipients and others engaged in alcohol program activities, specifically designed to address driver history records and impaired driving information systems.

5. Review and approve draft and final versions of the deliverables.

Eligibility Requirements

Applicants are limited to key State agencies (e.g., law enforcement agencies, Department of Motor Vehicle Administrations, highway safety offices, and other applicable State agencies or a consortium of the above). To be deemed eligible, each application package must include a letter of endorsement from the Governor's Highway Safety Representative and a letter of cooperation and participation from key system stakeholders, including at a minimum: the State Supreme Court Administrator; the Administrator of the DMV; the Chief Executive of the State Police or Highway Patrol agencies; and the President of the State's Association of Chief's of Police and/or the President of the State's Sheriff's Association. The State Police Chief's Association and Sheriff's Association should agree to solicit the support of the local law enforcement agencies to also participate is this project. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

Application Procedures

Each applicant must submit one original and three copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street SW., Room 5301, Washington, DC 20590. Submission of two (2) additional copies will expedite processing, but is not required. The application may be single spaced, must by typed on one side of the page only, and must include reference to NHTSA Cooperative Agreement No. NTS–01–2–05088. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Only

complete application packages received on or before due date, (See DATE above) will be considered. Only one award per State will be made.

Application Contents

1. The application package must be submitted with OMB Standard Form (SF) 424 (Rev. 4–88, including 424A and 424B) Application for Federal Assistance, with the required information filled in and certifications and assurances signed. OMB forms are available for downloading and printing on the Internet at: *www.whitehouse.gov/OMB/grants/index.html* site. While the SF 424A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail sufficient to provide meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed locally as matching funds, in support of the demonstration project.

2. The application shall include a project narrative statement which provides the following information in separately labeled sections:

(a) A summary of State DWI laws and processes;

(b) The identity of major stakeholders in the State's impaired driving system (include the court system and indicate whether it is unified or not). Describe each stakeholder's existing system for collecting and transmitting impaired driving information, including system components and capabilities, its strengths, deficiencies, and any improvements planned or underway.

(c) A description of the current degree of uniformity within and across agencies in collecting and managing information, (i.e., among the courts, enforcement agencies, and DMVs). Describe the existing citation information flow-process from law enforcement to the prosecutors/courts to the State DMV. This must include identification of specific problems that delay or hinder the citation information flow-process. Include whether or not all or some enforcement agencies use a uniform traffic ticket (UTT) or uniform citation form (i.e., either an identical form or a form with exactly the same data elements). If different citation forms are used, describe the differences and the impact those differences might have on tracking citations through the court system(s) to the DMVs. Similarly, include whether or not all courts or some courts use the same forms and/or terminology.

(d) Evidence of any systematic assessment or documentation of the impaired driving information system, including a Traffic Records Assessment, and any long-term improvement plans.

(e) A description of the extent to which the State currently meets the ten specific features of the model system and challenges and/or barriers.

(f) A detailed project plan, including timetables and milestones. Describe the proposed model improvements/innovations in detail and explain what percent of the system will be affected (e.g., all courts, half of enforcement agencies, etc.). Explain how each model specific feature will be addressed by each system improvement/innovation. Explain how the proposal fits into the State's long-term plans for improving information systems.

(g) A list of specific innovations to hardware or software and methods to be employed, including costs.

(h) A designated lead agency and project director. The application shall identify the proposed project director and any personnel considered critical to the successful documentation of the proposed project. Describe the roles and responsibilities of each and describe the roles and responsibilities of each stakeholder agency. Specify a mechanism for ensuring participation or buy-in of the stakeholders throughout the project (e.g., an interagency advisory board). The proposed level of effort in performing various activities shall also be identified. A staffing plan and resume for all key project personnel shall be included in the application. Briefly outline the organizational resources and specify funds the applicant will draw upon, and how the applicant will provide the project management capability and personnel expertise to successfully perform the activities states herein. Include staffing titles and a 1–2 sentence description of the position duties. The budget should segregate documentation project costs from implementation and evaluation costs, and how the funds should be allocated. For each activity, identify costs by *direct labor* with a breakdown of costs by proposed staffing; *direct materials/equipment* with a breakdown of major cost items; *total travel* costs with an explanation of the relationship to the project; *implementation* and *evaluation* costs; and *overhead.* Clearly identify any financial resources by the applicant organization or other supporting organizations to support the project.

(i) Letters of endorsement from the key stakeholder agencies that clearly state their buy-in and cooperation. Include the DMV, the State Supreme Court Administrators (or lower court equivalent), the Chief Executive of the State Police or Highway Patrol agencies, and/or the President of the State's Association of Chief's of Police and the President of the State's Sheriff's Association.

(j) Evidence that the State has had a history of supporting improvements to the impaired driving information system and using up-to-date technologies and innovations.

Model Impaired Driving Records Information System Requirements

The Model Impaired Driving Records Information System that applicants are expected to implement under this program contain elements that provide for the following five functions: (1) Tracking each impaired driving offender from arrest through dismissal or sentence completion; (2) providing aggregate data, for example, numbers of arrests, convictions, BAC distribution, and offender demographics; (3) conforming to national standards and system performance standards; (4) ensuring that data is accurate, complete, and reliable; and (5) maintaining quality control and security features that will prevent core and essential data elements and/or impaired driving records from being compromised or corrupted.

The model system has the following ten specific features.

(1) Statewide coverage (i.e., DMV, all courts adjudicating impaired driving cases, all law enforcement agencies).

(2) ''Real-time'' electronic access—the ability of law enforcement officers, DMVs, and the courts, including judges and prosecutors, to directly access driver license history information (e.g., license history and current status; vehicle registration status; applicable criminal history, and outstanding warrants) intrastate and potentially interstate, without relying on a dispatcher or other intermediary.

(3) An electronic citation system that is used by officers at the roadside and/or at the police station and that supports the use of bar-code, magnetic striping, or other technologies to automatically capture driver license and registration information on the citation and other standard legal forms, such as an implied consent form.

(4) A citation tracking system that accepts electronic citation data (and other standard legal forms) from enforcement agencies; provides real-time tracking from the distribution of citation forms, to issuance by police officers, through final adjudication, and the imposition and completion of administrative and judicial sanctions; provides access by citation number and

by offender; and allows on-line access by stakeholders.

(5) Immediate electronic transmission of data from enforcement agencies and the judicial process to the driver license system to permit immediate and automatic imposition of administrative sanctions, if applicable, and the recordation of convictions on the driver license.

(6) Electronic reporting to the courts and DMVs by probation, treatment, or correctional agencies, as applicable, with regard to compliance or non-compliance with administrative or court sanctions.

(7) Linkage of information from the incident/case tracking system and the offender-based DMV license, treatment, and probation systems to develop a complete record for each offender, including driver history.

(8) Timely access by all stakeholders, including the highway safety office, periodic to statistical reports needed to support agency operations and to manage the impaired driving control system, identify trends, and support problem identification, policy development, and evaluation of countermeasures.

(9) Flexibility to include additional data and technological innovations.

(10) Compliance with national standards developed by, for example, the American Association of Motor Vehicle Administrators (AAMVA) and the National Crime Information Center (NCIC).

The core data elements in the system include the following:

- Driver identifying information to include: name, address, driver license number, date of birth, and physical characteristics (i.e., gender, height, eye color, etc.),
- Driver license class and endorsements, status (valid, suspended, revoked, cancelled, hardship, commercial driver license (CDL), etc.), and restrictions,
- Vehicle license plate number and state of registration, status (e.g., registered, impounded, stolen), Vehicle Identification Number (VIN), and DOT carrier identification number for commercial vehicles,
- Relevant criminal history,
- Outstanding warrants and other administrative actions,
- In accordance with state policies for posting and retaining information on the driver record, offender's history or prior non-impaired driving traffic convictions and associated penalties, impaired driving convictions and/or pre-conviction administrative actions and associated penalties, crashes, current accumulated license penalty points, and administrative license actions,
- Outstanding citations or arrests,
- Arrest/citation information,
  - citation number(s), date, time of day, roadway location and jurisdiction,
  - arresting officer (LEA identifier),
  - violation(s) charged,
  - crash involvement, severity, number of passengers,
  - alcohol test result: refusal, alcohol concentration (blood, breath, or other), or missing,
  - drug test result: refusal, drugs detected, or missing,
  - results of Standardized Field Sobriety Tests and other field tests, as applicable.
- Pre-conviction administrative license and vehicle penalties imposed,
  - type and length of sanction,
  - date imposed,
- Prosecution/adjudication data,
  - court case identifier and specific identifiers for the court, judge, and jurisdiction,
  - date of arraignment,
  - date of disposition,
  - completion or non-completion of pre-conviction or pre-sentence deferral program (court deferred sentencing or conviction pending offender's completion of alcohol or other drug treatment program and/or other conditions),
  - final disposition of charge (dismissed, acquitted, plea to reduced charge (specify), convicted of original charge after trial, diversion program, adjournment in contemplation of dismissal, pending, etc.),
  - court penalties imposed (jail sentence, fines and penalties, probation, substance abuse assessment/treatment, ignition interlock device, community service, house arrest, dollar amount of fines, fees, and for victim restitution, vehicle forfeiture, license revocation or suspension, and other),
  - probation report and/or pre-sentence assessment information, if applicable by law,
- Subsequent violations, including driving while suspended/revoked, during license suspension period and resulting penalties,
- Completion of treatment/assessment (start and finish dates),
- Completion/non-completion of court and/or administrative sanctions,
- Penalties for failure to complete court and/or administrative sanctions or violations of probation, including license suspension/revocation,
- Whether license reinstated and if so, date of reinstatement,

A Model Impaired Driving Information system represents a collective effort involving DMVs, law enforcement agencies, the courts, and other agency stakeholders to ensure each organization has ready access to the information needed to plan and manage its work effectively and efficiently. The system also enables the highway safety office, the legislature, and other legitimate users in the highway safety community to obtain periodic and special statistical reports on the impaired driving system. The following are examples of the types of data that would be periodically generated or available on an ad hoc basis through a user-friendly protocol to the extent that state laws and policies permit:

- Referral rates to treatment statewide, by jurisdiction, and court and rate of treatment completion/non-completion,
- Conviction rate, BAC refusal rate, age and gender of offender statewide and by jurisdiction,
- Number of first and repeat offenders statewide and by jurisdiction,
- BAC distribution statewide and by jurisdiction, enforcement agency, etc.,
- Plea bargain rates statewide and by jurisdiction,
- Sentence or adjudication diversions/deferrals, if applicable,
- Referrals to treatment by first-time and repeat offenders,
- Numbers of license and vehicle sanctions imposed by DMV
- Average time from arrest to first court appearance, conviction, and sentencing, statewide, by jurisdiction, and by court
- Numbers of warrants issued for failure to appear, etc., statewide and by jurisdiction
- Subsequent violations, including driving while suspended/revoked, and resulting penalties during suspension/revocation

Review Procedures, Criteria and Evaluation Factors

Upon receipt of the application package, each package will initially be reviewed to ensure eligibility and that the application contains all of the items specified in the Application Contents Section of this announcement. An Evaluation Committee using the criteria outlined below will then review applications.

The application package must concisely address the following criteria:

1. The history of improvements to the impaired driving information system and the use of up-to-date technological innovations. (5 percent)

2. The range of DWI laws and systems (e.g., unified versus non unified court system, criminal versus civil offense, rural versus urban, complicated versus simple laws). Include range of DWI laws, systems, and innovative approaches proposed. (15 percent)

3. The extent to which proposed innovations leverage/build upon/complement existing efforts. (10 percent)

4. The extent to which technological innovations can be transferred to other states. (5 percent)

5. The extent to which the State has documented and assessed current system(s) and developed short and long-term plans for improvement. This includes but is not limited to: (a) how citations are provided to the court system (i.e., mailed, hand-carried, faxed, electronic transfer, etc.); and (b) the approximate length of time (for 90% of drivers charged with alcohol-related driving offenses) from citation issuance or arrest through adjudication, from adjudication to the State DMV, then posted to the driver's license record and made available to law enforcement and the court system. (15 percent)

6. How technological innovations will improve system(s). (5 percent)

7. How the system improvements meet the five functions and ten features of the model system, described above. (20 percent)

8. The proposal's feasibility, realism, and the ability of the lead agency, with stakeholder cooperation and buy-in, to implement a statewide model impaired driving information system. (10 percent)

9. The clarity and soundness of the project management structure, budget and the delineation of partners and stakeholders role in the project. The project personnel will be reviewed in terms of qualifications and experience. The staffing of the project should be adequate to manage and implement the project. Clearly identify estimated costs and provide sound rationale for the proposed budget. This includes how funding will be used to improve the existing system, including but not limited to existing citation information flow problems, if indicated. Financial contributions from stakeholder sources will be evaluated. Among equally-rated proposals, preference will be given to applicants with matching state funds. (15 percent)

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Debarment of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirement and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall provide a progress report to the Contracting Office's Technical Representative (COTR) every ninety (90)-days following date of award, except when a final report is due.

b. Project Work Plan, Implementation, and Evaluation Plan, with timelines to include critical path, major and minor milestones, and system checks. The grantee shall submit project work plan, implementation plan and evaluation plans with timelines incorporating comments received from the NHTSA COTR no more than 2 months after award of this agreement. This involves identification and resolution of potential technical problems and critical issues related to successful completion of this project. Briefly outline a specific work plan to document your project's history, how to implement a similar project, and a plan to evaluate its efficacy and effectiveness to include lessons-learned, best practices, organizational support, and costs. This outline should identify specific tasks required to accomplish the goals and objectives of the project, detailing how the system will be documented for replication by another agency. The specific innovations, interventions, and activities must be included in the work plan.

c. *Draft Final Report.* The grantee shall prepare a Draft Final Report that includes a description of the implemented project or system, partners, system design and innovations, evaluation methodology and findings, and recommendations for system improvements. In terms of ability to transfer the technology or the system to another State, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 90 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

d. *Final Report.* The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR one (1) month before the end of the performance period. The grantee shall supply the COTR one-camera ready version of the document, as printed and one copy, on appropriate media (diskette, etc.) of the document in the original program format that was used for the printing process. Some documents require several different original program languages (e.g., PageMaker for general layout and design, PowerPoint for charts, Project for project timeline management, and another for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, PowerPoint files should be clearly identified by both a descriptive name and file name (e.g., 2000 Fatalities—chart1.ppt). The document must be completely assembled with all colors, charts, sidebars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 floppy diskette (for small documents) or on any appropriate archival media (for larger documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc. The grantee shall provide four additional hard copies of the final document.

e. *Briefings, Presentations and System Demonstrations.* The Grantee shall make a briefing and system demonstration to NHTSA officials and other invited parties in Washington, DC at the completion of the project. The Grantee shall make a presentation concerning the project at a minimum of one national meeting (e.g., American Association of Motor Vehicle Administrators (AAMVA) or the National Association of Governor's Highway Safety Representatives (NAGHSR)). The Grantee shall prepare an article and submit it for publication in a professional journal. An initial briefing, an interim briefing approximately midway through the period of performance, in addition to a final briefing, may be required. All articles, briefings, and presentations/demonstrations will be submitted to NHTSA initially in draft format for review and comment. The Grantee shall submit drafts to the COTR 60 days before the event date or publication submission date. The COTR will review the draft report and provide comments to the Grantee within 15 calendar days of receipt of the documents.

3. During the effective performance period of cooperative agreements

awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 02–14750 Filed 6–11–02; 8:45 am]

BILLING CODE 4910–12–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–26, Secured Employee Benefits Settlement Initiative.

DATES: Written comments should be received on or before August 12, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Secured Employee Benefits Settlement Initiative.

OMB Number: 1545–1653.

Revenue Procedure Number: Revenue Procedure 99–26.

Abstract: Revenue Procedure 98–26 offers employers alternative 50 percent settlement options to settle cases in which they accelerated deductions for accrued employee benefits secured by letter of credit, bond, or other similar financial instruments. The purpose of this settlement initiative is to provide options for taxpayers and the IRS to expeditiously resolve these cases, thereby avoiding litigation of the cases in the future.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14826 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition.

DATES: Written comments should be received on or before August 12, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement for Exempt Individuals With a Medical Condition.

OMB Number: 1545–1411.

Form Number: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the United States because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Current Actions: There are no changes being made to the Form 8843 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 1 hour, 10 minutes.

Estimated Total Annual Burden Hours: 174,345.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14827 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8606

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8606, Nondeductible IRAs and Coverdell ESAs.

DATES: Written comments should be received on or before August 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nondeductible IRAs and Coverdell ESAs.

OMB Number: 1545–1007.

Form Number: 8606.

Abstract: Internal Revenue Code Section 408(o) requires certain information regarding nondeductible contributions to traditional IRAs. Code section 408A requires information regarding conversions from traditional IRAs to Roth IRAs and distributions from Roth IRAs. Code section 530 requires information regarding distributions from Education IRAs. Form 8606 is used to report the required information.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,800,000.

Estimated Time Per Respondent: 1 hour, 22 minutes.

Estimated Total Annual Burden Hours: 2,454,820.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14828 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before August 12, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111

Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120–F.

Abstract: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 21,618.

Estimated Time Per Respondent: 225 hours, 22 minutes.

Estimated Total Annual Burden Hours: 4,872,049.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–14829 Filed 6–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC, on July 24–25, 2002. The sessions on July 24 and July 25, 2002, are scheduled to begin at 8 a.m. and end at 6:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the July 24 session from 8 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 24, from 9 a.m. through July 25, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (Phone: 202–408–3684) at least five days before the meeting.

Dated: May 30, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–14684 Filed 6–11–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Draft Information Quality Guidelines

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (OI&T), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed Information Quality Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by VA. This notice solicits comments on procedures to obtain correction of information disseminated by VA.

DATES: Written comments and recommendations on the proposed guidelines should be received on or before July 2, 2002.

ADDRESSES: Submit written comments on VA Guidelines to Denise McLamb, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, FAX (202) 273–5981 or e-mail: *515.pocs@mail.va.gov.*

FOR FURTHER INFORMATION CONTACT: Denise McLamb at (202) 273–8030.

SUPPLEMENTARY INFORMATION: VA has developed information resources management procedures for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, VA will establish administrative correction procedures allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by VA that does not comply with the Office of Management and Budget or VA guidelines. VA will apply these standards with flexibility in a manner appropriate to the nature and timeliness of information to be disseminated and incorporate them into existing VA information resources

management and administrative practices.

The guidelines are also available at *www.va.gov/oirm/s515.*

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

Draft Information Quality Guidelines

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Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated

Introduction

The Office of Management and Budget (OMB) requires VA to prepare draft guidelines to ensure the quality of information disseminated by the Department and to make the guidelines available for public comment by early May 2002. This is in response to Section 515 requirements of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658). Section 515 directs OMB to issue Government-wide guidelines that provide policy and procedural guidance to Federal agencies for disseminating information.

The guidelines will apply flexible, appropriate, timely quality standards to the review and substantiation of data and information before it is disseminated to the public. They will be incorporated into existing VA information resources management and administrative practices and will include an administrative procedure to allow affected persons to seek and obtain corrected information. VA will report annually, beginning January 1, 2004, to the Director of OMB, the number and nature of complaints or corrections, and the resolutions issued.

These guidelines are subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35); OMB Circular A–130; Freedom of Information Act (FOIA) (5 U.S.C. 552); the Computer Security Act of 1987; and VA Directive 6102, Internet/Intranet Services.

II. Policy

VA will ensure and maximize the quality, objectivity, utility, and integrity of information it disseminates to the public. Additional levels of quality standards may be adopted as appropriate for specific categories of information.

III. Implementation

These guidelines apply to all information that VA disseminates on or after October 1, 2002. The administrative process for correcting information may be used on or after October 1, 2002, regardless of when the Department first disseminated the information.

VA's Assistant Secretary for Information and Technology/Chief Information Officer (CIO) serves as the Department official charged with oversight of these guidelines. VA officials are responsible for distributing these guidelines and any modifications hereafter to appropriate offices within their organizations.

A. Scope

The guides apply to all information disseminated by VA (except as noted in section C) to the public in all forms of media, *e.g.,* printed and electronic (the Internet and other technologies). Information disseminated products include books, papers, CD–ROMs, electronic documents, or other documentary material.

The guidelines apply to information disseminated by VA from a web page except for requests for corrections of typographical errors, web page malfunctions, or non-VA hyperlinks from VA's website.

VA will apply a higher quality standard for ''influential'' information that has a capacity to cause an adverse or financial impact on pubic policy or legislative matters relative to services provided to veterans. The more important the information, the higher the standard that is applied, *e.g.,* influential scientific, financial or statistic information.

As recommended by OMB, in some cases, when VA-disseminated information is collected from a variety of sources, the Department will ensure the information is regularly updated, revised and held in strict confidence. In such cases, the essence of the guidelines will still apply.

The guidelines will be applied in a common sense and workable manner. They will not impose unnecessary administrative burdens that would inhibit VA organization from taking advantage of the Internet and other technologies to disseminated information to the public.

B. Application

VA Administrations and Staff Offices will develop processes for reviewing the quality of information before it is disseminated. VA offices will treat information quality as an integral part of the development of information, including creation, collection, maintenance, and dissemination, and will substantiate the quality of information disseminated through documentation or other means appropriate to the information. The originating offices will use integral peer reviews and other review mechanisms to ensure that disseminated information is objective, upbiased and accurate in both presentation and substance.

VA will apply reproducibility standards to original and supporting data. VA organizations will be flexible in determining what constitutes ''original and supporting'' data. When original or supporting data must be generate, sound statistical methods will be applied. VA will apply a consistent reproducibility standard to transparency for how analytical results are generated (e.g., specific data used, various assumptions employed, specific analytical methods used, and statistical procedures employed). These methods will allow any qualified person to conduct an independent re-analysis, if necessary. This independent re-analysis should produce substantially the same results as the original research.

In cases where reproducibility may not occur due to other compelling interests, (i.e., ethical, feasibility, or confidentiality constraints), VA will: (1) perform robustness checks appropriate to the importance of the information involved (e.g., determining whether a specific statistic is sensitive to the choice of analytical method and the accompanying information disseminated): and (2) address the degree that reproducibility will be limited by the confidentiality of underlying data. VA will address ethical, feasibility, and confidentiality issues with care. Reproducibility of data is limited by the requirement that VA comply with federal confidentiality statutes, such as the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701, 5705, and 7332.

C. Exceptions

The guidelines do not apply to the dissemination of information limited to

Government employees or Department contractors or grantees, intra- or inter-Department use or sharing of Government information. They do not apply to correspondence with individuals, press release, archival records, library holdings, public filings, subpoenas, or adjudicative processes. Also not covered by these guidelines are responses to requests for Department records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar laws.

The guidelines are not designed for individuals who are seeking corrections of personal information or information related to death and disability payments, education, home loans, disability, medical care, insurance, burial and survivor, benefits or related information pertaining to specific VA claims, benefits records, or services delivered. Information pertaining to VA services can be obtained by calling VA's toll-free number at 1–800–827–1000.

The guidelines generally do not govern a third-party's dissemination of information (the exception being where the Department is essentially using the third-party to disseminate information on the Department's behalf).

The guidelines do not apply to opinions, if it is clear that what is being offered is someone's opinion, rather than fact or the Department's views.

Also excluded from the definition of dissemination are responses for FOIA requests and some scientific research (see section on ''Third Party Dissemination'').

D. Policy for Release of Information

Under the Freedom of Information Act requirements, VA's policy is to disclose its records upon request, except for those records that are protected from disclosure by law.

E. Third-Party Dissemination

If VA disseminates information prepared by an outside party in a manner that reasonably suggests that VA agrees with the information, the appearance of having the information represent VA's views makes the information subject to these guidelines.

By contrast, VA does not ''initiate'' the dissemination of information when Federally-employed scientists, Federal grantees, or contractors publish and communicate their research findings in the same manner as their academic colleagues. This applies even though VA has funded the research and may retain ownership or other intellectual property rights.

If VA, through a procurement contract or a grant, provides for a person to conduct research, and VA directs the person to disseminate the results (or VA reviews and approves the results before dissemination), then VA has ''sponsored'' the dissemination of this information, and the information is subject to these guidelines.

By contrast, if VA provides funding to support research, and if the researcher (not VA) decides to disseminate the results and determines the content and presentation of the dissemination, then VA has not ''sponsored'' the dissemination. The information is not subject to these guidelines even though VA has funded the research and may retain ownership or other intellectual property rights.

To avoid confusion regarding whether the Department is sponsoring the dissemination, the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the views'' of VA. On the other hand, subsequent VA dissemantion of such information requires that the information adhere to VA's information quality guidelines.

F. Peer Review Process

VA will use many types of peer reviews. Transparency is important for peer review, and VA's guidelines set minimum standards for the transparency of VA-sponsored peer review. If data and analytical results have been subjected to formal independent, external peer review, the information may generally be presumed to be of acceptable objectivity. The intensity of peer reviews will be commensurate with the significance of the risk or its management.

Peer reviewers must be selected primarily on the basis of technical expertise, be expected to disclose to VA prior technical/policy positions they may have taken on the issues at hand, be expected to disclose to VA their sources of personal and institutional funding (private or public sector), and conduct their reviews in an open and rigorous manner.

As an organization responsible for dissemination of vital health and medical information, VA will interpret reproducibility and peer-review standards in a manner appropriate to assure timely flow of vital information and VA to medical providers, patients, health agencies and the public. VA may temporarily waive information quality standards in urgent situations (e.g., imminent threats to public health or homeland security) in accordance with the latitude specified in VA's guidelines.

When VA disseminates analyses of risks of human health, safety, and the environment, if at all, it will apply the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)) to the extent feasible.

IV. Administrative Correction Procedures

An administrative process is available allowing affected persons to seek and obtain, where appropriate, timely correction of information that does not meet the stated guidelines. The correction and appeal processes have been designed to be flexible, appropriate in nature, and timely in responding to a request for correction. It is available for genuine and valid requests for correction of information that does not meet the stated guidelines.

A. Information Correction Process

If an affected person believes that disseminated information is not accurate, clear, complete or unbiased, he or she may challenge or submit a complaint by written correspondence or via VA's homepage:

1. Write to: Director, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420. In submitting written requests, the envelope and the request both should be clearly marked ''Section 515 Complaint''; or

2. Access VA's homepage at *www.va.gov* and select the ''Contact VA'' link that appears at the bottom of the page.

Requests for correction of information will be routed to the appropriate VA Administration or Staff Office for review. VA will respond to all requests for corrections within 45 working days of receipt. If the VA office receiving the complaint determines that the request does not adequately and reasonably describe the disseminated information source, the correspondent will be advised that additional information is needed. If the challenged information is determined to be correct or valid, the correspondent will be provided with a statement as to why the request for correction is not acted upon and how to file an appeal.

B. Information Appeal Process

If affected persons who request corrections of information do not agree with VA's decision (including the corrective action, if any), they may file an appeal in writing within 60 days to the office indicated in the denial

correspondence. The envelope and reconsideration request both should be clearly marked ''Information Correction Reconsideration Request.'' It is important that correspondents state why they disagree. The appropriate VA organization will review the appeal and act upon the request for reconsideration. The correspondent will be notified whether the request was granted or denied and what corrective action, if any, VA will take on the appeal.

To ensure objectivity, the VA organization that originally disseminated the information does not have responsibility for both the initial response and any subsequent appeal. In addition, if VA believes other agencies may have an interest in the appeal, VA will consult with those other agencies about their possible interest.

C. Administrative Management of Corrected Records

Corrective actions will vary. Possibilities include immediate correction or replacement of information on the Department of Veterans Affairs website (<*http://www.va.gov/*>), revision of subsequent issues of recurring products, and issuance of errata for printed reports and other data products.

V. Reporting Requirements to OMB

On October 1, 2002, the final guidelines for information quality disseminated by VA will be submitted to OMB and posted on VA's website.

On January 1, 2004, VA will electronically submit an annual fiscal report to OMB, with a recurring report due on January 1 each year thereafter. The report will provide information (both quantitative and qualitative where appropriate) on the number, nature, and resolution of complaints received by VA regarding its perceived or confirmed failure to comply with OMB and VA guidelines.

VI. Definitions

A. ''Affected'' persons are those who may benefit or be harmed directly by the dissemination information. These guidelines are not designed for individuals to seek corrections of personal information or information related to personal services, benefits, or claims for benefits.

B. ''Dissemination'' of information means VA-initiated or sponsored distribution of information to the public.

C. ''Influential'' information is determined when VA can reasonably discern that dissemination of information will, or does have, a clear and substantial impact on important public policies or important private section decisions. This type of information must have a significant impact on VA's public policy or legislative matters relative to delivery of veterans' benefits or health care services. VA's influential information includes the following categories:

1. Statistical information obtained from original data collections; administrative records; compilations of data from primary sources such as forecasts and estimates derived from statistical models, expert analyses, data collection, and analysis and interpretations of statistical information.

2. Financial information referring to Government revenues and expenditures.

3. Scientific information designating the method of research in which a hypothesis, formulated after systematic, objective collection of data is tested empirically (relying on experiment and observation rather than theory).

D. ''Information,'' for purposes of these guidelines, including the administrative correction/appeal procedures, means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition does not include:

1. Opinions, where the presentation makes clear that the statements are subjective opinions, rather than facts, or a determination of the Department. However, any underlying information published by the Department upon which the opinion is based may be subject to these guidelines;

2. Information originated by, and attributed to, non-Department sources, provided the Department does not expressly rely upon that information. Examples include: information reported and duly attributed in materials prepared and disseminated by the Department's hyperlinks on the Department's website to information that others disseminated; and reports of advisory committees and international organizations published on the Department's website;

3. Statements related solely to the internal personnel rules and practices of Department and other materials produced for Department employees, contractors, agents or alumni;

4. Descriptions of VA, its responsibilities and its organizational components;

5. Statements, the modification of which might cause harm to national security, including harm to the national defense or foreign relations of the United States and statements of U.S. foreign policy;

6. Materials covered by the United States Information and Educational Exchange Act of 1948 (the Smith-Mundt Act), 22 U.S.C. Sec. 1416–1a (Ban on domestic activities);

7. Testimony of Department officials in court, to administrative bodies, or to Congress;

8. Investigory material compiled pursuant to U.S. law or for law enforcement purposes in the United States or abroad; or

9. Statements which are, or which reasonably may be expected to become, part of subpoenas or adjudicative processes, the subject of litigation, or other dispute resolution proceedings.

E. ''Quality'' is the encompassing term of which ''utility,'' ''objectivity,'' and ''integrity'' are constituents. VA applies these terms to the guidelines as follows:

1. ''Utility'' refers to the usefulness of the information to the intended users. VA will achieve utility by staying informed of information needs and developing new data, models, and information products where appropriate.

2. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accutate, reliable, and unbaiases. VA will achieve objectivity by using reliable data sources and sound analytical techniques, and preparing information products that are carefully reviewed and use proven methods by qualified people. The objectivity standard will not override other compelling interests such as privacy, intellectual property, and other confidentiality protections.

3. ''Integrity'' refers to the protection of VA information from unauthorized, unanticipated, or unintentional access or revision to ensure that the information remains authenic and is not compromized. To ensure the integrity of information that the Department collects, administers, and disseminates, VA has implemented rigorous information security controls to protect its information systems and resources. VA protects the confidentiality of its sensitive information by implementing security policies, programs, and procedures mandated by Fedeal law and guidance. These Department-wide activities comply with the statutory requirements created toprotect sensitive information gathered and maintained on individuals by the Federal Government. These requirements are contained in the following Federal information security laws and regulations:

- Clinger-Cohen Act of 1996.
- Computer Security Act of 1987 (Pub. L. 100–235).

• Government Information Security Reform Act (GISRA) (Pub. L. 106–398, Title X, Subtitle G).

• Health Insurance Portability and Accountability Act of 1996 (HIPAA).

• OMB Circulars A–123, A–127, and A–130 and their appendices.

• Paperwork Reduction Act of 1995.

• Privacy Act of 1974.

F. ''Reproducibility'' means that information is capable of being substantially reproducted with essentially the same result, subject to an acceptable degree of imprecision or margin. With respect to analytical results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytical results.

G. ''Transparency'' refers to the clear, obvious and precise nature of the information. When VA disseminates influential information, a high degree of transparency about data and methods will be maintained to facilitate its reproducibility by qualified third parties. Methods to implement VA's guidelines will be transparent by providing documentation, ensurig quality by reviewing undeylying methods used in developing data, consulting (as appropriate) with experts and users, and keeping users informed about corrections and revisions.

[FR Doc. 02–14842 Filed 6–11–02; 8:45 am]

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Federal Register

Wednesday,
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Part II

Environmental Protection Agency

40 CFR Parts 72 and 75

Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NO_X Budget Trading Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–7207–4]

RIN 2060–AJ43

Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NO_X Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is taking final action on the portions of the June 13, 2001 proposed rule revisions that modify the existing requirements for sources affected by the Acid Rain Program and by the NO_X Budget Trading Program under the October 27, 1998 NO_X SIP Call. Certain changes to the proposed rule revisions have been made based on the public comments received. EPA is not finalizing the proposed changes at this time to the Appeal Procedures or to the Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport. Today's final rule establishes additional flexibility and options for sources in meeting the continuous emission monitoring system (CEMS) requirements under programs to reduce sulfur dioxide and nitrogen oxides emissions. These revisions may apply to sources that monitor and report emissions only during the ozone season, as well as to sources that monitor and report emissions for the entire year. The provisions in this final rule benefit the environment by ensuring that sulfur dioxide ($S0_2$), nitrogen oxides (NO_X), and carbon dioxide (CO_2) emissions are accurately monitored and reported, even as they benefit the affected industrial sources by creating opportunities to adopt cost saving procedures.

DATES: The effective date of this rule is July 12, 2002. However, regulated entities will have additional time to implement certain requirements, as described in Section V, Rule Implementation, and in the rule.

ADDRESSES: *Docket.* Supporting information, including public comments, used in developing the regulations is contained in Docket No. A–2000–33. This docket is available for public inspection and photocopying between 8:00 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays, and is located at: EPA Air Docket (MC 6102), Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Gabrielle Stevens, Clean Air Markets Division (6204N), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone number (202) 564–2681 or the Acid Rain Hotline at (202) 564–9620. This document and technical support documents can be accessed through the EPA Web site at: http://www.epa.gov/airmarkets.

SUPPLEMENTARY INFORMATION: A redline/strikeout version of 40 CFR parts 72 and 75 as amended by this final rule is available in the Docket and on the EPA Web site referenced above. The contents of the preamble are listed in the following outline:

I. Regulated Entities
II. Background and Summary of Final Rule
III. Statutory Authority, Regulatory History, and Stakeholder Involvement
IV. Summary of Major Comments and Responses
A. Missing Data
1. What changes to the CEMS missing data procedures of §§ 75.31 through 75.37 are finalized?
2. How are the CEMS missing data provisions of subpart H affected by today's rule?
3. What CEMS missing data provisions are finalized for units that do not produce electrical or thermal output?
4. Will today's rule affect the way in which load ranges (or ''bins'') are established for missing data purposes?
B. Low Mass Emissions Units
1. Does today's rule change the qualification requirements for low mass emissions units?
2. How does today's rule change the certification application procedures and requirements for low mass emissions units?
3. How will today's rule affect the way in which fuel- and unit-specific NO_X emission rates are determined for low mass emissions units?
4. Does today's rule allow testing to be done at fewer than four load levels to determine fuel- and unit-specific NO_X emission rates for low mass emissions units?
C. Quality Assurance/Quality Control
1. What changes to the method of determining the NO_X MPC, MEC, span, and range are finalized in today's rule?
2. What changes to the 7-day calibration error test are finalized?
3. What changes to the QA/QC requirements for low-emitting sources are finalized?
4. What changes to the stack flow-to-load ratio test are finalized?
5. What special QA provisions are finalized for units that do not produce electrical output or steam load?
D. Appendix D
1. What changes to the definitions of ''pipeline natural gas'' and ''natural gas'' are finalized?
2. How does today's rule change the method by which a gaseous fuel qualified as ''pipeline natural gas'' or ''natural gas''?
3. How does today's rule change the fuel sampling and data reporting requirements for gaseous fuels other than pipeline natural gas and natural gas?
4. What changes to the appendix D missing data procedures are finalized?
E. Other Highlights and Changes
1. What changes to the compliance dates and timelines for monitor certification in § 75.4 are finalized in today's rule?
2. Does today's rule change the way in which unit and stack operating hours are counted?
3. Does today's rule change the notification requirements for monitor certifications and recertifications?
4. Does today's rule affect the way in which emissions are monitored and reported for units with bypass stacks?
5. What other noteworthy provisions are finalized in today's rule?
F. Streamlining Changes
V. Rule Implementation
VI. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Unfunded Mandates Reform Act
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. National Technology Transfer and Advancement Act
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 13132: Federalism
H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. Congressional Review Act

I. Regulated Entities

Entities regulated by this action are fossil fuel-fired boilers, turbines, and combined cycle units that serve electric generators, produce steam, or cogenerate electricity and steam. While part 75 of title 40 of the Code of Federal Regulations (40 CFR) primarily regulates the electric utility industry, certain State and Federal NO_X mass emissions programs also rely on 40 CFR part 75 (subpart H), and those programs may include boilers, turbines, and combined cycle units from other industries. Regulated categories and entities include:

Category	Examples of Regulated Entities
Industry	(1) Electric service providers. (2) Process sources with large boilers and turbines where emissions exhaust through a stack.

This table is not intended to be exhaustive, but rather to provide a guide

for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the applicability provisions in 40 CFR 72.6, 72.7, and 72.8 and parts 96 and 97. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Background and Summary of Final Rule

Today's action modifies existing monitoring and reporting requirements in 40 CFR parts 72 and 75. These requirements support emission control programs that use the monitoring and reporting provisions of part 75, such as the Acid Rain Program, and the NO_X Budget Trading Program developed under the October 27, 1998, NO_X SIP Call. The emphasis of these revisions is three-fold: (1) To streamline the rule by eliminating outdated sections; (2) to make technical corrections and clarifications to the rule; and (3) to add flexibility to the monitoring and reporting requirements. The most substantive changes finalized are as follows: the definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2 are finalized as proposed to remove all references to the H_2S content of the fuel and instead be based on total sulfur content, along with corresponding changes appendix D to part 75; the low mass emissions (LME) units provisions in § 75.19 are clarified and expanded and, for units with certain types of NO_X emission controls, qualification as a LME unit is made easier; the CEMS missing data procedures are revised to allow fuel-specific missing data substitution; the missing data procedures in subpart H of part 75 are expanded and clarified for sources that are non-load based and/or report emission data only in the ozone season; the NO_X span and range provisions in appendix A are revised to make them easier to implement for combustion turbines; and the alternate calibration error limit for daily operation is changed from 10 ppm to 5 ppm for units with span values of 50 ppm or less.

EPA has developed a Response to Comment document (see Docket No. A–2000–33, Item V–C–1) as a supplement to this preamble, which addresses all the comments received on the proposed rule revisions. Comments that were raised and are not addressed in this preamble are responded to in this supplemental document.

III. Statutory Authority, Regulatory History, and Stakeholder Involvement

In accordance with titles I and IV of the Clean Air Act (CAA, or the Act), with today's action EPA is promulgating revisions to rules implementing programs that the Agency has established to mitigate interstate transport of nitrogen oxides, as well as to reduce the acidic deposition precursor emissions of sulfur dioxide and nitrogen oxides. EPA originally promulgated 40 CFR parts 72 and 75 on January 11, 1993, to implement the Acid Rain Program as authorized by title IV of the Act. EPA has subsequently promulgated several final rules revising CEMS requirements in part 75 and relevant definitions in part 72 (*see* below).

Section 110 of the Act requires that State Implementation Plans (SIPs) prohibit sources from contributing significantly to nonattainment or maintenance of attainment in another State. On October 27, 1998, EPA issued the NO_X SIP Call, a final rule under section 110 requiring certain States to revise their SIPs to meet NO_X emission budgets to prevent such significant contribution to ozone nonattainment. States may adopt in their SIPs a NO_X Budget Trading Program for large electric generating units (EGUs) and large non-electric generating units (non-EGUs) and require such units to monitor under part 75. Further, section 126 of the Act authorizes EPA to directly regulate, and require reductions of NO_X emissions from, sources that emit in violation of the prohibition in section 110 against significantly contributing to ozone nonattainment or maintenance problems in a downwind State. On January 18, 2000, EPA published a finding that large EGUs and certain large non-EGUs in particular States named in petitions filed by several northeastern States emit NO_X in violation of Section 126 of the CAA (65 FR 2674). In that same notice, the EPA finalized the Federal NO_X Budget Trading Program in part 97 as the control remedy and required that these units monitor under part 75.

In today's rule, the provisions of parts 72 and 75 are revised to modify the requirements for sources under the Acid Rain Program, the NO_X SIP Call, and the Federal NO_X Budget Trading Program.

As noted above, the Agency first promulgated parts 72 and 75 under title IV on January 11, 1993. On May 17, 1995 and November 20, 1996, the Agency revised parts 72 and 75 to make implementation simpler (60 FR 26510 and 61 FR 59142). On May 21, 1998, the Agency proposed additional revisions to parts 72 and 75 to make implementation easier and more efficient, to improve quality assurance requirements, and to create new alternative monitoring options (63 FR 28032). EPA promulgated final rule revisions addressing some of these additional proposed revisions, based on comments received, when EPA promulgated the NO_X SIP Call (63 FR 57356). On May 26, 1999, EPA issued final rule revisions addressing the remaining May 21, 1998 proposed revisions (64 FR 28564). On June 13, 2001, EPA proposed further revisions to parts 72, 75, 78, and 97 (66 FR 31978). The revisions to parts 72 and 75 are being finalized in today's rule, while the changes to parts 78 and 97 will be addressed in a later rulemaking.

Throughout the implementation of the Acid Rain Program, particularly since 1995, EPA has worked and continues to work on a regular basis with stakeholders, the regulated community, the public, other state and local agencies, and environmental groups and consultants. Internally, EPA holds frequent policy meetings to discuss many of the questions and problems that affected sources raise to their Regional contact in EPA. Many of the changes in today's rule result from industry petitions to the Agency as well as comments, phone calls, and dialogues during conferences and workshops. Most recently, EPA conducted two conferences in July (Louisville, KY) and September (Alexandria, VA) of 2001, and then initiated five regional workshops targeted at the regulated community and state agencies to support the Acid Rain Program and assist in implementing the NO_X Budget Trading Program. EPA is committed to this ongoing interaction with stakeholders across all spectra.

IV. Summary of Major Comments and Responses

EPA responded to all comments received by the close of the extended comment period, August 20, 2001, regarding the current proposal. EPA's responses are summarized in this section of the preamble and are available in their entirety in the Response to Comment document in the rule docket (*see* Docket No. A–2000–33, Item V–C–1). The majority of comments related to parts 72 and 75; therefore, this section addresses those issues. Revisions to part 78 received no comments, and revisions to part 97 received only two comments, both of which are addressed in the Response to

Comment document. As noted above, EPA intends to finalize changes to part 78 and 97 in a separate rulemaking. The major topics in part 75 that EPA is focusing on in this section are: missing data; LME units; quality assurance and quality control (QA/QC); appendix D; other highlights and changes; and streamlining changes.

A. Missing Data

1. What Changes to the CEMS Missing Data Procedures of §§ 75.31 Through 75.37 Are Finalized?

Background

a. What is Currently Required?

The part 75 CEMS missing data procedures in §§ 75.31 through 75.37 require the use of substitute data values for each unit operating hour in which quality-assured data are not obtained, either from a certified CEMS, a reference method, or an approved alternative monitoring system. The method of determining the appropriate substitute data values depends principally on two things: (1) the length of the missing data period; and (2) the percent monitor data availability at the end of the missing data period.

Existing part 75 missing data procedures do not take into consideration the type of fuel combusted. Rather, a single database of quality-assured monitor operating hours is maintained for each monitored parameter (*e.g.,* SO_2, NO_X, flow rate) in order to provide substitute data values when a historical lookback is required.

For units with add-on SO_2 or NO_X emission controls, § 75.34 allows two principal missing data options. The owner or operator may either: (1) Report maximum potential values or, if the controls are documented to be operating properly, report the standard missing data procedures; or (2) petition the Administrator to develop and use site-specific parametric monitoring procedures for missing data substitution in lieu of using the standard missing data procedures. Section 75.34(a)(2) also allows the owner or operator to petition the Administrator for permission to report the maximum controlled emission rate recorded in the previous 720 quality-assured monitor operating hours (without regard to control operational status), in cases where the standard missing data routines would require the maximum value in the lookback period to be reported.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to revise the part 75 missing data procedures to allow the standard missing data substitution in § 75.33 to be done on a fuel-specific basis. The proposed revisions would allow the owner or operator to create and maintain separate databases for missing data purposes for each type of fuel combusted in the unit. Substitute data values would be derived from the appropriate database, depending on the type of fuel being burned during the missing data period.

For units with add-on SO_2 or NO_X emission controls, EPA further proposed to remove the petition provision from § 75.34(a)(2) and replace it with a new missing data option, based on the operating status of the emission controls. The owner or operator of a unit with add-on SO_2 or NO_X emission controls would be allowed to create and maintain two separate databases, controlled and uncontrolled, for missing data purposes. Any hour in which the add-on controls were documented to be operating (*i.e.,* on) would be included in the controlled database. Any hour in which the controls were not operating (*i.e.,* off) would be included in the uncontrolled database. The appropriate substitute data value for each hour of a missing data period would be taken from either the controlled or uncontrolled database, depending on whether the emission controls were documented (by means of parametric data) to be operating properly during the hour.

EPA also proposed to change the way in which parametric data are used to document proper operation of add-on emission controls during periods of missing SO_2 or NO_X data. Proposed § 75.34(d) would require the owner or operator to establish a demonstrable correlation between the parametric data and control device removal efficiency, as part of the QA/QC program for the unit. The correlation would be based on a minimum of 720 hours of parametric data recorded during unit operation, when the add-on controls are in-service and the SO_2 or NO_X monitor at the control device outlet is providing quality-assured data. The correlation would serve as the basis for determining whether substitute data values should be taken from the controlled database or from the uncontrolled database during periods of missing SO_2 or NO_X data.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the fuel-specific missing data option, with some editorial changes including new language addressing the co-firing of fuels (*see* Discussion, below). However, based on comments received, EPA is not adopting the other proposed missing data option, which would have allowed the owners or operators of units with add-on emission controls to separate their data into controlled and uncontrolled databases. The final rule replaces, in response to these comments, the proposed option with a provision that accomplishes a similar objective with respect to seasonally operated control devices, without requiring control device operational status to be documented. The replacement provision allows subpart H sources that report data on a year-round basis to separate their quality-assured NO_X emission data into ozone season data and non-ozone season data for missing data purposes. The final rule also retains the provision in § 75.34 which allows sources to petition to report the maximum controlled emission rate in a 720-hour lookback period.

Discussion

Two commenters were supportive of the proposed fuel-specific missing data option (Utility Air Regulatory Group (UARG); Clean Energy Group). However, another commenter asked EPA to explain what it means to create and maintain a ''separate database'' for each fuel or blend, and also asked how a ''blend'' is determined (KVB–Enertec (KVB)). Two commenters questioned how these proposed missing data procedures would be implemented for units that sometimes co-fire different types of fuel (UARG, KVB). Specifically, the commenters expressed concern about having to maintain an extra database for co-fired hours. One of the commenters suggested keeping only single-fuel databases and pro-rating the missing data values during co-fired hours (UARG).

Based on these comments, EPA incorporates the fuel-specific missing data option into today's rule, although the final rule language is somewhat modified from the proposal. The final rule differs from the proposal in that it provides for greater flexibility in how to implement the new missing data option. Paragraphs (b)(6) and (c)(8) in § 75.33 give more general implementation guidelines, rather than providing detailed instructions. Regarding the comments about co-firing, while EPA agrees that it is desirable to maintain as few databases as possible, the Agency did not incorporate the commenter's suggested approach because the commenter did not provide an adequate explanation of how it would work. However, today's rule provides an alternative to maintaining separate databases for co-fired hours for units that co-fire fuels and elect to use the fuel-specific missing data option. The final rule allows the owner or operator to keep single-fuel databases, provided

that the database for the fuel with the higher emission rate is used to provide substitute data values during co-fired hours.

Regarding the Agency's proposal to provide a control status-specific missing data option for units with add-on SO_2 and NO_X emission controls, two commenters supported the concept of this option (UARG, Clean Energy Group). However, strenuous objections were raised to the proposed method of documenting proper operation of the add-on controls (UARG; Robert Machaver (Machaver)). In particular, the commenters objected to the potential high cost of developing complex correlations between parametric data and control device removal efficiency and questioned the usefulness and reliability of such correlations. One commenter also objected to removing the petition provision from § 75.34(a)(2), which would allow the source to report the maximum controlled value in a 720-hour lookback period (UARG).

After careful consideration of the comments, EPA replaces the proposed missing data option with a procedure that will achieve the objective of the proposal for seasonally operated controls, without being dependent on the operational status of the add-on emission controls. The Agency also is not adopting the requirement to develop a correlation between control device removal efficiency and parametric data to demonstrate proper operation of the add-on emission controls, principally in response to the objections of the commenters to the cost and level of effort needed to develop correlations between parametric data and control device removal efficiency. The original rule language in § 75.34(d) is retained, requiring sources to specify in the quality assurance (QA) plan for the unit the essential parameters and ranges needed to verify proper operation of the add-on emission controls.

It should be noted that one of the principal reasons EPA proposed the control status-specific missing data option in § 75.34(a)(2) for units with add-on emission controls was to accommodate units that are subject to the Federal NO_X Budget Trading Program (which is being implemented as a result of the NO_X SIP Call). In particular, many units required to report NO_X emissions data on a year-round basis will operate their add-on NO_X emission controls only during the ozone season, in order to comply with the NO_X emission reduction requirements of the NO_X SIP Call. The proposed missing data option would have allowed these sources to separate their uncontrolled and controlled emission data, thereby providing a more equitable scheme for missing data substitution.

After further consideration, taking into account the supportive comments for the concept of the proposed missing data option, EPA believes that the objective of the option can be accomplished in a different way, without requiring separate controlled and uncontrolled databases to be maintained or that any parametric correlations be developed. Accordingly, § 75.34(a)(2) of today's rule allows the owner or operator to separate the historical, quality-assured NO_X emissions data into ozone season and non-ozone season NO_X data, for missing data purposes. Use of this missing data option is limited to units that report NO_X mass emissions data on a year-round basis under subpart H of part 75, and that operate their NO_X emission controls only during the ozone season, or in a less efficient manner outside the ozone season. During periods of NO_X missing data, revised § 75.34(a)(2) specifies that the appropriate substitute data values are to be drawn from one database or the other, depending on whether the missing data period is inside or outside the ozone season. Missing data periods that begin outside the ozone season and continue into the ozone season are treated as two separate missing data incidents, one ending on April 30, hour 23, and one beginning on May 1, hour 00. Further, the standard NO_X missing data algorithms may be applied at all times during the non-ozone season missing data periods, without any requirement to record parametric data to verify proper operation of add-on controls.

2. How Are the CEMS Missing Data Provisions of Subpart H Affected by Today's Rule?

Background

a. What Is Currently Required?

The missing data procedures for units which are subject to a State or Federal NO_X mass emissions reduction program and must monitor NO_X mass emissions according to subpart H of part 75 are specified in §§ 75.70(f) and 75.74(c)(7). Section 75.70(f) requires the initial and standard missing data procedures of §§ 75.31 through 75.37 to be used for sources that report emission data on a year-round basis. Section 75.74(c)(7) requires subpart H sources that report data on an ozone season-only basis to use the missing data procedures of §§ 75.31 through 75.37 also, except that only data from within the ozone season are to be used in the historical lookbacks.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to revise § 75.74(c)(7) by adding a new paragraph (iii), with subparagraphs (A) through (M), explaining how to apply the part 75 missing data procedures in §§ 75.31 through 75.37 on an ozone season-only basis. EPA proposed adding these provisions to subpart H because the part 75 missing data routines are designed for sources that report emission data on a year-round basis. Thus, for all of the part 75 standard missing data routines that use 720 or 2,160 hour historical lookbacks to determine the appropriate substitute data values, the databases for the lookbacks include all of the quality-assured CEMS data that have been recorded throughout the year. Also, the percent monitor data availability (PMA) calculations described in § 75.32, which are always based on a particular number of unit operating hours, include unit operating hours from all four calendar quarters of the year.

Proposed § 75.74(c)(7)(iii) would modify the initial and standard part 75 missing data procedures in §§ 75.31 through 75.37 to adapt them to sources that report emission data only during the ozone season. The missing data instructions for ozone season-only reporters were written in a parallel manner to the missing data procedures for year-round reporters.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the changes to § 75.74(c)(7) as proposed, except that for both PMA calculations and historical missing data lookbacks, the lookback periods would be limited to three years (26,280 clock hours) prior to the missing data period, rather than three ozone seasons as proposed.

EPA further notes that the fuel-specific missing data option described above in question 1 of this section is available to all subpart H sources, and the option to create and maintain separate ozone season and non-ozone season databases for missing data purposes is available to subpart H sources that report emissions data on a year-round basis.

Discussion

EPA received only one comment on the proposed missing data revisions to § 75.74(c)(7). The commenter recommended that the lookback period be limited to three years prior to each missing data period rather than three ozone seasons as proposed (Environmental Systems Corporation (ESC)). Another commenter questioned similar language found in proposed

§ 75.33(c)(9), *i.e.*, the parenthetical expression ''(or three ozone seasons)'' next to the words, ''three years'', referring to missing data lookbacks (Monitor Labs (Monitor)). EPA agrees with the commenters that for the purposes of missing data lookbacks, consistency is essential. For both year-round reporters and sources that report emissions on an ozone season-only basis, no data recorded more than three years prior to the missing data period should be used in the historical lookbacks. Therefore, in today's rule, all references in § 75.33, § 75.74(c)(7)(iii), and elsewhere to data recorded in the previous three ozone seasons are removed and replaced with references to the previous three years.

3. What CEMS Missing Data Provisions Are Finalized for Units That Do Not Produce Electrical or Thermal Output?

Background

One of the main objectives of the June 13, 2001, proposed rule was to modify the existing monitoring and reporting sections of parts 72 and 75 that apply to NO_X emission reduction programs, such as the Federal NO_X Budget Trading Program developed in response to the October 27, 1998 SIP call. Under the NO_X SIP call, States have the flexibility to include stationary sources other than EGUs in their NO_X reduction plans. Some of these non-EGUs (such as cement kilns and refinery process heaters) do not produce electrical or thermal output, *i.e.*, ''load.''

a. What Is Currently Required?

EPA examined the part 75 missing data provisions to assess whether those provisions are adequate for determining NO_X mass emissions from non-EGUs. As a result of this assessment, EPA concluded that for industrial boilers which produce steam load and which are very similar to electric utility boilers, no significant changes to the missing data provisions of part 75 would be required. However, for cement kilns and refinery process heaters which do not produce electricity or steam load, EPA concluded that modifications to the missing data routines for NO_X concentration, NO_X emission rate, stack flow rate, and fuel flow rate would be necessary, since these missing data routines are load-dependent.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed non-load-based missing data routines which are modeled after, and are much the same as, the existing routines for load-based units, with one important difference: the owner or operator of a non-load-based unit would have a choice to define and use ''operational bins'' to segregate the quality-assured emissions data, or not to use operational bins at all.

The reason EPA proposed allowing the use of operational bins was to give affected facilities the flexibility to customize their missing data routines, based on plant operational parameters and conditions that affect NO_X emissions, stack flow rate, or fuel flow rate. The procedures and requirements for defining operational bins were proposed as new sections 3 and 4 of appendix C to part 75. These new provisions would require the owner or operator to provide a complete description of each operational bin in the hardcopy portion of the monitoring plan and to monitor the operating conditions used to define the operational bin.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the missing data provisions for units that do not produce electrical or steam load. The final rule differs from the proposal in the following ways: (1) In Table 3, the algorithms requiring a comparison of the average value in a 2,160 lookback period against the 90th (or 95th) percentile value have been simplified to require that just the percentile value be reported (the reasons for this change are given in the Discussion immediately below); and (2) proposed section 4 of appendix C, which would have allowed the use of operational bins for fuel flow rate missing data, is not adopted (the reasons for not finalizing that option are explained in detail in the Discussion in Section IV. D.4. of this preamble).

Discussion

EPA received comments on the proposed missing data provisions for non-load-based units from only two commenters (KVB; American Portland Cement Alliance (APCA)). The first commenter stated that the rule should provide a clear way of defining ''operational bins'' (KVB). The second commenter fully supported the proposed operational bin provisions, but objected to the use of 90th percentile, 95th percentile, and maximum values in the missing data lookback periods for NO_X and flow rate, claiming that these percentile values, which may be reasonable for EGUs, are unfairly punitive for the affected units in the commenter's industry (APCA). The second commenter included supplementary data previously presented to EPA in 1999 (see Docket No. A–2000–33, Item II–C–2) and proposed an alternate missing data protocol, using a ''percent-above-average'' approach in lieu of using the 90th percentile, 95th percentile, and maximum values. The commenter asked EPA to revisit the Agency's prior data analysis, claiming that EPA's previous analysis had overstated the variability of EGU emission data by not taking certain factors into consideration. EPA declines to adopt the commenter's percent-above-average proposal, and concludes that no additional data analysis is necessary in order to support an appropriate missing data routine for non-load units.

The most significant reason that EPA rejects the commenter's proposal is because the proposal rests on a fundamental misunderstanding of the basis and purpose of the missing data procedures. As stated in previous meetings and conversations with the commenter and in EPA's detailed written response, sent to the commenter on November 22, 2000 (see Docket No. A–2000–33, Item II–C–3), the key issue is the following: the missing data procedure in 40 CFR part 75 is designed to provide substitute values strictly relative to a unit's own emissions history, not compared to the emissions history of the universe of all units, as would be the case using the proposed percent-above-average multiplier.

The missing data procedure strictly pertains to the monitoring of emissions, not to the operation of a unit. It implements Section 412(d) of the CAA which mandates EPA's Administrator to prescribe a means to calculate emission values during periods when data from the certified monitor is unavailable. The purpose is to substitute a value that is not lower than the unknown actual value for an improperly operated monitor. This means that a comparison of the variability of one unit's emission data to another unit's emission data (or to a class of other units' emission data), or a comparison of emission levels at one unit relative to another unit (or class of units), is not relevant in assessing the applicability of the missing data procedure. This can be seen both in the regulatory history and the structure of the missing data procedure.

As stated in the preamble to the original 40 CFR part 75 regulations published in the **Federal Register** on January 11, 1993 (58 FR 3635), the primary intent in developing the missing data procedure was to provide a ''substantial incentive to improve monitor availability'' (58 FR 3637). To provide this substantial incentive, the Agency originally considered proposals to use only the maximum previous value recorded and the average of the five highest previously recorded values,

and finally settled on the current tiered approach. All of the approaches, contemplated and adopted, were premised on providing an incentive to keep monitors operational by requiring substitution of either the maximum value previously recorded at each specific facility or a value higher than at least 90 percent (for shorter monitor outages) or 95 percent (for longer monitor outages) of the values previously recorded at the specific unit. None of the approaches offered variations based on differences in emission variability or emission levels encountered at different units. To do so would have been contrary to the goal of providing, for each and every unit, a ''substantial incentive to improve monitor availability'' (58 FR 3637, January 11, 1993).

The commenter, on the other hand, proposes using a multiplier which is based on the averaged emissions history of a different set of units, that of utility units, which in aggregate would not display the high emissions excursions that are typical of cement kilns. The commenter does not dispute the need for a missing data procedure as an important component of a monitoring program; just its application during times of long monitor outage and low monitor availability—exactly the times that the missing data routine was designed to limit. Their proposal suggests using the ''percent above the average for each percentile as calculated from the electric utility boiler data to the cement kiln data.'' This proposal underscores the commenter's misunderstanding about the purpose of missing data.

Use of the commenter's proposed percentage-above-average multiplier would mean that even in situations of substantial monitor outages (representing as much as 20 percent of a monitoring year), kilns whose own emission history displayed frequent excursions into high emission levels (as illustrated, for example, in commenter's Figure 1, page 2 of the attachment to Docket No. A–2000–33, Item IV–D–2) would substitute values substantially below these high excursions. The proposed procedure could have an effect completely contrary to the regulatory intent of the missing data procedure, *i.e.*, providing an incentive to improve monitor availability. In fact, EPA believes this approach, were it to be employed, would cause a reverse incentive to turn off monitors at affected facilities. The commenter acknowledges that the NO_X emitted from their facilities is thermal NO_X, which is a critical aspect of the product's quality control. Because temperatures are product-related, they are carefully monitored. Operators may be able to predict, therefore, when emissions are high. Because of the market value of emissions, the percent-above-average multiplier approach may encourage sources to turn off monitors at higher fuel flow rates or higher kiln temperatures when NO_X emissions might increase. EPA experienced similar concerns with the utility industry in the early 1990s, when a diverse array of commenters recommended that EPA provide sufficiently punitive procedures to ensure that there would be an ''effective deterrent to deliberate shutdowns of CEMS during period of high emissions' (58 FR 3637, January 11, 1993). These concerns were a factor in the final approach that was adopted.

The commenter's methodology is inconsistent with the purpose of missing data. The commenter misconstrues the concept of missing data substitution and its implementation by stating that missing data routines were created to encourage three activities: maintaining CEMS; getting malfunctioning CEMS back on line quickly; and operating power plants efficiently so as to avoid NO_X spikes. While the first two points are correct, the third ''activity'' has never been a purpose of missing data. Rather, it is a consequence of efficient plant operations which has some ancillary benefits. Operating bins, discussed later, afford similar benefits to kiln operators. In fact, there are numerous options available to kiln operators, as there are for EGUs, to minimize the need for and impacts of missing data routines. For instance, in the early years of monitoring, some utilities that were initially concerned about missing data protocols installed redundant backup systems so that if one monitor went down, another was available and no missing data period would be incurred. Others bought ''like-kind replacement analyzers'' that were also available should the primary monitor not perform. However, over time, many of these sources have found that these options were not necessary because, through proper maintenance of the CEMS, performance is usually not an issue. The commenter's analysis does not consider these options.

The commenter also claims that ''facilities with less reliable CEMS'' need tailored missing data protocols ''to represent the realities of cement manufacturing.'' EPA does not believe that this comment presents a relevant issue. The commenter has provided no evidence to demonstrate any basis for monitors to perform less reliably on cement kilns. The NO_X concentration monitor and stack flow monitor (critical CEMS components) that are installed on a cement kiln stack are no different from those that might be installed at a coal-fired utility boiler. APCA indicates that most of its companies burn coal as fuel in their cement making process. The result of burning coal, just like in a utility boiler, is a gas that exits the kiln through a stack. The CEMS samples that gas on minute-by-minute intervals in order to come up with a quality assured operating hour of data, which is banked in a data acquisition and handling system (DAHS). The only time the owner or operator of a cement kiln will have to use the missing data substitution protocol is when the CEMS is out of order or not operating properly. Utilities are currently maintaining CEMS at above 99 percent availability, up from around 95 percent when CEMS were first installed on utility boilers under the Acid Rain Program in the mid 1990s.

The commenter has also suggested that the standard missing data procedure creates an equity issue, and that EPA is penalizing the cement industry unfairly because of its high variability. EPA disagrees with the commenter. EPA requires that all continuous emission monitors be continuously maintained and operated and has created an incentive structure, in the form of missing data procedures, to ensure this. Studies have demonstrated variability, comparable to that which APCA claims for cement kilns, for utility units in the pre- and post-control mode (see Docket No. A–92–15, Item II–I–26). EPA has demonstrated in previous data analyses and correspondence with the commenter (see Docket No. A–2000–33, Items II–C–2 and II–C–3) that there are many EGUs with variability of NO_X emission rate comparable to that for the cement kilns. EPA examined data from more than 1,000 utility boilers and compared it to the limited data submitted by the commenter for seven cement kilns out of the approximately 200 kilns operating in the U.S.. EPA's intent in performing the data analysis was to show that, even taken at face value, the commenter's contention is without merit: a statistical analysis of the data showed that there are EGUs with just as much emission rate variability (reflected as relative standard deviation). Consequently, EPA does not accept the premise of the commenter's concern.

Further, it is important to note that many utilities have done an exceptional job, over time, of reducing emission variability. EPA would also note that the cement industry data analysis did not

reflect data stratification into operational bins. At the commenter's suggestion, EPA has proposed the use of ''operational bins'' which allow emissions data to be sub-categorized for missing data purposes (*e.g.*, for mid-kiln injection of fuel, a bin for injection system on and a bin for injection system off). These operational bins are analogous to the load bins available to EGUs, and will allow non-load units to avoid unnecessarily reporting the highest missing data value, if they can show that during the time CEMS are not operational the unit was in an operating bin for which a ''lower'' highest missing data value applies. The Agency is confident that application of the operating bin concept will reduce the conservatism of missing data procedures for kilns.

The commenter also suggests that EPA's proposal to remove the hour before/hour after (HB/HA) algorithm from the missing data routine for non-load based units suggests that the Agency concedes that kilns are more variable than EGUs. To the contrary, the purpose of the HB/HA option, as applied to load based units, is to capture the fact that units may be operated for extended periods at peak load. In such a case, a unit at its maximum load and maximum emissions may actually have greater than the 95th percentile emissions (*i.e.*, the 95th percentile may be too low a number under such conditions to substitute for the unknown value). So the HB/HA provision was developed to potentially capture such incidents by providing, during periods of long outages, a substitute value which is the greater of the HB/HA or the 90th (or 95th) percentile in a 2,160 hour lookback period. Based on commenter-provided data for seven cement kilns, EPA initially suspected that short-term variability could cause the application of HB/HA to be punitive. However, although the Agency has concerns relating to the representation of industry data, we believe that there is little risk in deferring applicability of the provision until such time as sufficient information is available on an operating bin basis to assess the effectiveness of percentile based data substitution. EPA reserves the right to examine cement kiln data that is reported in the future and reconsider whether or not this decision is appropriate.

As an alternative, in the June 13, 2001 proposed rule revisions, EPA proposed to replace the HB/HA criterion with the average value in a 2,160-hour lookback period in the NO_X missing data algorithms in Table 3. The commenter has correctly pointed out in comments on the proposal that EPA's proposed replacement for the HB/HA criterion in Table 3 (*i.e.*, comparison of the average in the 2,160 hour lookback period and 90th or 95th percentile value of the same set of data) is technically unsound. The proposed replacement algorithms that require the ''higher of'' the 90th (or 95th) percentile value or the average value to be reported are meaningless, since the 90th or 95th percentile values will always be higher than the average for the same data set. Therefore, in the interest of regulatory clarification, Table 3 has been modified to eliminate the required comparison of averages and higher percentiles, simply leaving in place the percentile requirement.

In view of the these considerations, in today's rule EPA finalizes the missing data provisions as proposed for both load-based and non-load-based units, save for the revision to Table 3 that removes the requirement for the average versus percentile value comparisons.

4. Will Today's Rule Affect the Way in Which Load Ranges (or ''Bins'') Are Established for Missing Data Purposes?

Background

a. What Is Currently Required?

Section 2 of appendix C to part 75 provides a procedure for establishing missing data load ranges (''bins'') for NO_X emission rate, NO_X concentration, stack flow rate and fuel flow rate. The procedure consists of establishing 10 (or, in some cases, 20) load ranges, which are defined as percentages of the maximum hourly gross load of the unit.

b. What Changes Were Proposed?

EPA proposed to revise section 2.2.1 of appendix C, particularly the method of determining the maximum hourly average gross load (MHGL) for cogeneration units or other units for which some portion of the heat input is not used to produce electricity. The MHGL for such units would be determined by converting the maximum rated hourly heat input of the unit to an equivalent electrical output in megawatts. The maximum rated hourly unit heat input would include the maximum potential heat input from auxiliary combustion sources, such as duct burners or auxiliary boilers. The efficiency of the unit would be used in conjunction with the maximum unit heat input to calculate the MHGL. Having established the maximum hourly gross load, the missing data load ranges would then be determined as percentages of the MHGL.

c. What Changes Is EPA Finalizing?

EPA is not adopting these proposed changes, based on the comments received. Today's final rule retains the existing text of section 2.2.1 of appendix C.

Discussion

EPA received significant adverse comments on the proposed changes to section 2.2.1 of appendix C. Two commenters objected to the proposed removal of the option to use hourly gross steam load to establish the load bins (UARG, Machaver). The commenters also raised technical questions and issues. Concerns were expressed that the proposed method of converting heat input to equivalent electrical output would underestimate the electrical output of the steam turbine for combined cycle units, and that the method does not provide a means of accounting for hourly load contributions from the duct burner during fuel flowrate missing data periods (UARG, Machaver). After consideration of these comments, EPA is not finalizing the proposed changes to section 2.2.1 and retains the existing rule text.

B. Low Mass Emissions Units

1. Does Today's Rule Change the Qualification Requirements for Low Mass Emissions Units?

Background

a. What Is Currently Required?

In October, 1998, EPA promulgated the low mass emissions (LME) methodology in § 75.19, which provides certain qualifying units an alternative means of complying with part 75 without installing continuous monitoring systems. For an Acid Rain Program unit to qualify to use the LME methodology, § 75.19(a) states that the unit must be oil- or gas-fired, combusting only natural gas or fuel oil, and must demonstrate that its emissions do not exceed 25 tons of SO_2 and 50 tons of NO_X per year. This demonstration must consider both actual (or projected) emissions and emissions calculated as set forth in § 75.19. For a non-Acid Rain unit subject to a State or Federal NO_X emissions reduction program that adopts the monitoring provisions of subpart H of part 75, if the unit reports NO_X mass emission data only during the ozone season, § 75.74(c)(10) states that the unit can qualify for LME status if it demonstrates that its emissions do not exceed 25 tons of NO_X per ozone season. The existing text of part 75 does not specify a LME NO_X emission

threshold for non-Acid Rain subpart H units that report emissions data on a year-round basis.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to revise paragraph (a) of § 75.19 to more clearly state the LME applicability criteria for Acid Rain Program units and non-Acid Rain subpart H units. The revisions would make a distinction between sources that report emission data on a year-round basis and those that report data only during the ozone season. These changes were proposed to help owners and operators of non-Acid Rain Program units to more easily determine whether a unit can qualify for LME status. EPA proposed to clarify what the LME thresholds are for Acid Rain Program units and subpart H units.

EPA also proposed to make a minor revision to the definition of a LME unit in § 75.19(a)(1) by removing from the definition the terms ''gas-fired'' and ''oil-fired'' and adding a parenthetical, ''(i.e., diesel fuel or residual oil)'' after the words, ''fuel oil''. The Agency did not propose to expand the use of LME methodology beyond units that burn fuel oil and natural gas.

c. What Changes Is EPA Finalizing?

EPA received substantive comments on the proposed clarification of the applicability of the LME methodology, requesting that the criteria to qualify for LME status be made less restrictive. In response to these comments, today's rule increases the NO_X low mass emissions threshold for year-round reporters from 50 to less than 100 tons per year and increases the NO_X low mass emissions threshold for ozone season-only reporters from 25 to 50 tons per ozone season. For units that choose to (or are required to) report emissions data on a year-round basis, no more than 50 tons of the annual NO_X limit may be emitted during the ozone season. Today's rule also revises the definition of a ''low mass emissions unit'' in § 72.2 , expanding the applicability of the LME provisions to include units that burn gaseous fuels other than natural gas.

Discussion

Two commenters requested that EPA raise the NO_X emission thresholds for LME qualification (KeySpan Corporation (KeySpan); PSEG Fossil LLC (PSEG)). One commenter recommended raising the annual NO_X threshold to 100 tons per year, noting that many peaking units emit less than 100 tons of NO_X per year and that such units are often unmanned, making it difficult to properly maintain and operate continuous monitoring systems (KeySpan). Another commenter asked EPA to consider raising the LME threshold for ozone season-only reporters to 100 tons per ozone season (PSEG). In response to these recommended rule changes, EPA performed additional data analysis to see if raising the LME thresholds for NO_X could be justified, consistent with the principles EPA articulated in the 1998 rule for limiting eligibility to use LME. The results of that data analysis showed that raising the annual NO_X threshold from 50 to under 100 tons per year and increasing the ozone season threshold from 25 to 50 tons per ozone season are both defensible and consistent with the Agency's original intent, and accomplish Clean Air Act objectives. In the October 27, 1998 final rule, Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone (63 FR 57485), EPA laid out the applicability criteria for LMEs and initially concluded that NO_X thresholds as high as those adopted today would result in inappropriate types of sources being able to use LME, and in too many tons of NO_X emissions being exempted from CEMS. However, based on the extensive data EPA has subsequently collected under the Acid Rain Program and the Ozone Transport Commission (OTC) NO_X Budget Program, and in response to numerous persuasive source-specific petitions as well as comments on the proposed rulemaking, EPA has re-assessed its position in 1998, and now concludes that a cutoff of less than 100 tons NO_X per year, no more than 50 tons of which may be emitted in any ozone season, is both defensible and reasonable, as discussed below.

There are a number of reasons that the Agency is electing to reopen this issue at this time. First, a considerable number of units that currently are not subject to the Acid Rain Program (ARP), and thus part 75 monitoring, will be required to continuously monitor their emissions under part 75 as a result of the implementation of the NO_X SIP Call. These units include a number of smaller existing units that Congress explicitly exempted from the Acid Rain Program under title IV of the Act. Some of these turbines currently monitor under the provisions of the OTC NO_X Budget Program, generally by using default monitoring approaches, while others are located in other NO_X SIP Call States. In addition, these units include units less than 25 MWe that some OTC States have included in their NO_X SIP Call programs, as well as non-EGUs that are covered by the NO_X SIP Call. In some States, these units become subject to part 75 monitoring as early as the 2002 ozone season as part of the States' implementation of their NO_X SIP Call-related programs. These non-Acid Rain Program units face the expenditure of considerable resources to measure a rather limited portion of the total NO_X emissions.

Also, many new units being built to fulfill increased electricity demand are unmanned, gas-fired turbines with low NO_X burner technology. These units, in many cases, will be required to account for emissions under State implementation plans to reduce NO_X in the NO_X SIP Call regions of the eastern United States. Unlike units with add-on technologies (such as selective catalytic reduction (SCR)) where continual oversight is required to maintain low emissions performance, these units reliably operate at a low and consistent emissions level. Consequently, the degree of confidence the Agency can have in the attainment of overall program goals has increased, while the risks associated with underestimation of emissions from these units appears less significant. For unmanned sites, the use of CEMS provides additional challenges for owners and operators and these concerns are an additional reason for the Agency to evaluate the LME provisions.

In evaluating the LME provisions, the Agency has established a de minimis test as an internal program check to assure that only a de minimis level of emissions from all regulated sources are allowed to use exemptions from the Acid Rain Program or monitoring methods under Part 75 (including the new unit exemption, appendix E and LME provisions). In the October 27, 1998 **Federal Register**, when the Agency last considered this issue (63 FR 57486), the de minimis evaluation was based on, among other things, projections of the cumulative effect of the new National Ambient Air Quality Standards (NAAQS) for ozone (O3), NO_X SIP Call, Phase II of the ARP, and other State and regional programs (such as the OTC). The 1998 preamble established a one percent de minimis threshold of about 20,000 tons per year, covering all CEMS-exempted methods, on the basis of preliminary information which indicated that future NO_X emissions after implementation of these various CAA programs would be approximately two million tons per year. This de minimis threshold constituted a revision of the approximately 40,000 ton level EPA had originally discussed in

the 1993 rule for CEMS-exempted methods.

Since that time, the Agency has developed updated information on projected year 2010 emissions from the utility sector. First, in 1999, pursuant to the CAA Amendments EPA published its section 812 prospective study of benefits under the CAA (Final Report to Congress on Benefits and Costs of the Clean Air Act, 1990 to 2010, EPA 410–R–99–001). This document estimates that total utility emissions would be approximately 3.7 million tons per year in 2010. The analysis assumes implementation of the NO_X SIP Call in the entire OTAG modeling domain. In fact, the SIP Call covers only a portion of the OTAG region (excluding States in EPA Region 1 (ME, NH, and VT), Region 4 (FL and MS), Region 5 (MN and WI), Region 6 (AR, LA, OK, and TX), Region 7 (IA, KS, NE), and Region 8 (ND and SD). Since that report, EPA has updated its estimates for 2010 post-CAA implementation NO_X emissions, and, as of October 2001, estimates approximately 4.3 million tons of NO_X per year after implementing major CAA programs such as Phase II of the Acid Rain Program and the NO_X SIP Call (see Docket No. A–2000–33, Item IV–A–7). As a result of this updated information, EPA believes that the de minimis analysis should reflect current projections and start with a one percent target level of 43,000 total tons for CEMS-exempted methods.

As indicated in the 1998 rulemaking, the Agency's determination of the appropriate level of NO_X emissions to be considered de minimis needs to be based on ''all units that may be covered by the de minimis exceptions from the requirement to use CEMS, i.e. all units using the new unit exemption, appendix E, and the new low mass emissions methodology'' (63 FR 57486). Because considerably more information on these regulated sources is now available, the Agency undertook a reevaluation of the potential number of various units that may choose excepted methodologies to account for their emissions rather than installing CEMS (see Docket No. A–2000–33, Item IV–A–6).

EPA's recent analysis (Docket No. A–2000–33, Item IV–A–6) shows that as of December 2001, there were 763 exempt new units. This total is significantly higher than the 1998 projection of 278 units. These units, based on EPA's tons per unit estimate developed in 1993 for the new unit exemption (see 58 FR 3590, January 11, 1993), have estimated emissions of approximately 8,700 tons. Exempt units are those new units under the Acid Rain Program that are less than or equal to 25 MWe and burn clean fuel with low sulfur content.

The next class of units subject to the de minimis threshold are units that monitor based on appendix E of part 75. These appendix E units are gas-or oil-fired peaking units. At the end of the year 2000, there were 263 appendix E units, and those units emitted slightly more than 14,000 tons of NO_X per year. In the 1998 preamble, EPA used 1997 data to show that there were approximately 235 units that used appendix E and that these units had approximately 11,000 tons of NO_X per year.

Finally, we examined the number of units that could potentially qualify for LME status under the new NO_X thresholds. We conducted the analysis for both ARP units and non-ARP units that will become subject to part 75 under the NO_X SIP Call. For this analysis, we used emissions data from the ARP and OTC programs and data from the NO_X SIP Call baseline inventories to evaluate multiple years of emissions data for each unit. We assumed that units' actual rates would be comparable to their fuel- and unit-specific tested emissions rates as allowed for under the LME provisions except for units with rates less than 0.15 lb/mmBtu, where we used 0.15 lb/mmBtu as a default given the requirements in § 75.19. The other assumptions and details of the analysis are included in Docket Item IV–A–6.

For Acid Rain Program units only, the change from a 50 to 100 tons of NO_X per year threshold would increase the number of existing units that could qualify by about 50 units with a total of 3,000 tons. This excludes appendix E units that already qualify for de minimis monitoring. This increase in potential LME units, taken together with emissions from appendix E units and exempt new units, would result in approximately 27,000 tons of NO_X per year subject to the de minimis target level.

For the NO_X SIP call, the increase from a threshold of 25 tons of NOX per ozone season to 50 tons per ozone season could increase the total number of existing non-ARP units that may qualify for LME by slightly more than 200 units. About 70 of those units are units in the OTC region that are under 25 MWe and currently monitor using default values under the OTC NO_X Budget Program. These units generally would also qualify for appendix E monitoring if the NO_X threshold was not increased. The total increase in tons that may be monitored using appendix E or LME provisions under an increased ozone season NO_X threshold would be approximately 2,000 tons per ozone season (an increase from about 5,500 to 7,500 tons per ozone season from these non-ARP units). Together with the estimated total of 27,000 tons per year NO_X from the ARP units, the total amount of emissions from units within the group under the de minimis concept conservatively represents approximately 35,000 tons of emissions. This total remains below the 43,000 tons target level based on one percent of projected year 2010 emissions and allows for future growth of new units that qualify for LME, appendix E, or the new unit exemption. It is also important to remember that the LME analysis accounts for units that could potentially qualify for LME monitoring requirements; not all units that potentially qualify will necessarily use the LME provisions. For example, the 1998 preamble (63 FR 57487) estimated that 224 units would qualify at the LME thresholds promulgated at that time. In the year 2000, two units used the LME provisions. Since that time, the number has increased quickly, primarily because of new turbine units that likely also would qualify for the appendix E methodology.

It is important to note that units electing alternative methodologies such as LME status and appendix E are still accountable for all their emissions using default emissions values or conservative test results. What they are relieved from is installing CEMS. The Agency was able to evaluate the long term (quarterly) emission rates for a number of units that had switched from the use of appendix E to the use of CEMS over the past few years. That study (see Docket No. A–2000–33, Item IV–A–8) examined 41 ARP units, and paired quarters from similar seasons with a minimum number of operating hours. While the lack of data from simultaneous time periods limits the ability to draw precise conclusions from this analysis, the analysis did show that the quarterly emission rates were, on average, slightly higher when units measured with appendix E rather than CEMS (approximately 4 percent). Because the appendix E and LME provisions rely on the same basic test procedures to establish a fuel- and unit-specific default rate, this analysis is relevant to the LME provisions as well. The Agency believes this analysis also supports the change in the LME thresholds that EPA is finalizing in this rulemaking by indicating that significant under-reporting of emissions should not occur as a result of using the LME provisions. We also think it provides further support for the reliability of estimates in

our de minimis analysis that is based primarily on existing CEMS data for estimating the tonnage from potential LME units.

At the same time, the analysis did indicate that in particular situations, appendix E values could be below reported CEMS values. In light of this finding that appendix E (and by extension LME) monitoring will not always produce conservative values, use of alternative methods of monitoring should remain constrained by the de minimis threshold EPA has established. This finding also suggests that these monitoring methods may not be appropriate alternatives to CEMS in other programs (such as trading programs with much lower caps, or programs with short term emission limits such as Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements established through New Source Review permits).

Cumulatively, the data indicate that if the LME threshold were raised to 50 tons per ozone season, it would allow 95 percent of the numerous small units in the OTC NO_X Budget Program that currently use non-CEMS methodologies (which are, in many cases, similar to LME) to qualify as LME units under the NO_X Budget Trading Program. If the threshold were not raised, only about 65 percent of these same small units could qualify as LME units. EPA considers a less burdensome transition for these smaller units from the OTC Program to the larger NO_X Budget Trading Program to be highly desirable. Allowing these units to use LME methodologies under part 75 (which are similar to methodologies currently used under the OTC Program), rather than CEMS requirements under part 75, will reduce economic and administrative burden for both the affected sources and the regulatory agencies. Further, LME methodologies are reasonably accurate methods given the small amount of emissions contributed by this class of units. In view of these considerations, EPA has concluded that there are distinct benefits, and no significant environmental risks, in raising the LME qualifying NO_X thresholds to 50 tons per ozone season and less than 100 tons per year, respectively. Therefore, these higher emission threshold values are promulgated in today's rule. However, note that for units subject to the NO_X Budget Trading Program, the final rule places a constraint on the 100 tons per year NO_X limit: no more than 50 of the 100 tons per year may be emitted during the ozone season. EPA has added this constraint for purposes of consistency, so that all NO_X Budget units using the LME methodology will be limited to 50 tons of NO_X emissions per ozone season, whether data are reported on a year-round basis or only during the ozone season. In addition, should cost of monitors go down, or if the ceiling turns out to be much lower than that which we have projected herein, the Agency reserves the right to re-assess any and all of these exceptions in the future if the need arises.

Regarding the definition of a LME unit as presented in § 72.2 and in § 75.19(a), one commenter questioned why the definition appears to restrict LME qualification to units that burn only fuel oil and natural gas (UARG). The commenter suggested that the broader terms ''gas-fired'' and ''oil-fired'' be used as the criteria for determining LME applicability so that units burning ''other'' gaseous fuels, such as landfill gas, would also be allowed to use the LME methodology. After careful consideration of these comments, EPA agrees that there is no compelling reason for excluding other types of gaseous fuels from LME applicability. Further, the Agency believes that this change will reduce the administrative burden on both the sources and the regulatory agencies, by providing a way for low-emitting sources that burn ''other'' gaseous fuels to meet part 75 requirements without having to submit special petitions under § 75.66. Therefore, today's rule expands the applicability of the LME methodology to include units that burn gaseous fuels other than natural gas.

In order for a unit that burns one of these ''other'' gaseous fuels to qualify as a LME unit, fuel- and unit-specific default emission rates would have to be established. If the unit is Acid Rain-affected, § 75.19(a)(1)(i)(C) of today's rule requires the sulfur content of the fuel to be characterized by performing the 720-hour demonstration described in revised section 2.3.6 of appendix D, before the unit can qualify for LME status. The results of that demonstration may be used to determine a default SO_2 emission rate for the fuel, unless the fuel is found to have both a high sulfur content and a high sulfur variability (*i.e.,* variability with a standard deviation of greater than 5.0 grains per 100 scf); should that occur, the unit would be ineligible for LME status. To derive a default CO_2 emission factor for the fuel, revised § 75.19(c)(1)(iii) requires Equation G–4 in appendix G to be used, in conjunction with a carbon-based F-factor calculated from the results of fuel sampling and analysis. To determine the default NO_X emission rate for the gaseous fuel, revised § 75.19(c)(1)(ii) requires fuel- and unit-specific emission testing to be performed.

2. How Does Today's Rule Change the Certification Application Procedures and Requirements for Low Mass Emissions Units?

Background

a. What Is Currently Required?

In response to concerns raised by both regulated entities and other regulatory agencies, EPA examined the administrative procedures in part 75 pertaining to LME units, especially the certification application procedures. It was determined that these procedures could be clarified to simplify program implementation and to make the LME requirements as consistent as possible with other sections of part 75.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed requiring the electronic portion of the LME certification application be sent to the Administrator and the hardcopy portion to the appropriate Region and State. The Agency also proposed requiring that LME certification applications be submitted no less than 45 days prior to the date on which use of the methodology is projected to commence; and the projected commencement date be indicated in the application.

In addition, EPA proposed clarifications to the requirements for new or newly affected units and the extent to which a LME applicability demonstration could rely on projected emissions instead of actual, historical data. Finally, EPA proposed clearer definitions for the date of provisional certification for LME units.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the provisions requiring submission of the LME certification application at least 45 days before the methodology is projected to be used and specification of the projected commencement date in the application. The final rule also clarifies that the methodology is considered to be provisionally certified as of the date of submittal of the certification application, but may not be used to report data prior to the projected commencement date.

In response to substantive comments regarding the initial LME certification application procedures, in particular the manner in which actual historical emissions data, projected emissions, and calculated emissions are used to demonstrate that a unit qualifies for LME status, today's rule adds significant flexibility to the way in which a unit

can initially qualify. The final rule allows existing units to claim LME status using projected emissions rather than historical data, if a Federally enforceable permit restriction is taken which limits unit operation, or if the owner or operator has recently installed emission controls on the unit.

Today's rule also simplifies the application procedure by removing from § 75.19(a)(2) the requirement that the certification application must include calculated emissions for the previous three years in addition to the actual historical data for those years. For purposes of the initial certification application, the final rule allows the owner or operator of a new unit to use conservatively high default NO_X emission rates other than the values listed in Table LM–2 to project the unit's emissions.

Discussion

EPA received no comments on the proposed changes and clarifications to the LME administrative processes. Therefore, these provisions have been finalized, with only minor editorial changes for added clarity and consistency. However, two commenters objected to the manner in which an existing unit qualifies for LME status, believing it to be overly restrictive (West Virginia Manufacturers Association, PSEG). The rule requires three years or ozone seasons of historical data to demonstrate that the unit is a LME. The commenters objected to this provision because it automatically excludes units if their recent historical NO_X emissions have been above the LME thresholds, even if the source owner or operator is willing to take an enforceable permit restriction on the number of operating hours in future years. Both commenters recommended that § 75.19 be revised to conditionally allow existing units to qualify for LME status prospectively, rather than retrospectively. A third commenter objected to the apparent requirement in § 75.19(a)(2)(i) for new units to use the generic NO_X default emission rates from Table LM–2 to project the unit's NO_X emissions in the initial certification application (Machaver). The commenter recommended that EPA allow the use of a conservative but more realistic estimate of the unit's emissions (*e.g.,* the permitted NO_X emission limit or 0.15 lb/mmBtu for units with add-on controls) for the purpose of the initial certification application.

After consideration of these comments, EPA has revised the requirements for a unit to initially qualify as a LME unit. The revisions to § 75.19(a) affect both new and existing units. The final rule allows the owner or operator to claim LME status for a unit in the following ways:

1. Using three years (or ozone seasons) of actual data from electronic data reporting (EDR) submittals under part 75 or under the OTC NO_X Budget Program or, if such reports are unavailable, using estimates of the actual emissions from other sources of information (including default emission rates, emission rates derived from stack testing or part 60 CEMS, fuel sampling results, fuel usage records); or

2. Based on three years (or ozone seasons) of projected emissions for new units with no actual, historical data; or

3. Using a combination of actual and projected emissions totaling three years (or ozone seasons), if :

(a) Three years (or ozone seasons) of actual emissions data cannot be provided (e.g., for a unit that has been in operation for only one or two years); or

(b) An existing unit takes a Federally enforceable permit restriction on unit operating hours in order to stay below the LME emission thresholds; or

(c) The emissions during any of the three previous years (or ozone seasons) are not representative of present or future emissions because the owner or operator has recently installed emission controls on the unit.

Section 75.19(a)(4) of today's rule also allows the owner or operator of a new unit to use default NO_X emission rates other than the ones in Table LM–2 to project the unit's emissions in the initial certification application. The final rule allows the use of estimated NO_X emission rates which are lower than the Table LM–2 values, provided that the estimates are still conservatively high with respect to the expected actual emission rates. For instance, for a new gas-fired turbine that uses selective catalytic reduction (SCR) to control NO_X emissions, an estimated emission rate of 0.15 lb/mmBtu could be used in lieu of the Table LM–2 generic default of 0.7 lb/mmBtu. For units that use water/steam injection or dry low-NO_X (DLN) technology, an emission rate based on the permit limit could be used. For units without NO_X emission controls, the emission rate estimate could be based on historical emission test data. However, § 75.19(a)(4) makes it clear that these estimated NO_X emission rates are to be used only for the purposes of the initial certification application. The estimated emission rates may not be used for reporting purposes in the time period extending from the first hour in which the LME methodology is used to the date and hour in which the actual emission rate is established by fuel- and unit-specific emission testing. During that interval, either the Table LM–2 value or the maximum potential emission rate must be reported. EPA believes that these new provisions in § 75.19(a)(4) will ensure that new units are not unfairly excluded from using the LME methodology and will also provide a strong incentive to the owners or operators to perform the NO_X emission rate testing in a timely manner.

EPA notes that when the initial estimate of NO_X emission rate for the LME certification application is derived from historical emission test data, it may be prudent to base the estimate on data collected under process operating conditions (e.g., heat input rate, unit load.) comparable to those at which the highest NO_X emission rates are expected to occur during the four-load appendix E test. This will help to ensure that the unit's LME status is not jeopardized since the estimated NO_X emission rate will likely be close to the actual default emission rate that is derived from the appendix E testing and used for emissions reporting.

3. How Will Today's Rule Affect the Way in Which Fuel- and Unit-Specific NO_X Emission Rates Are Determined for Low Mass Emissions Units?

Background

a. What Is Currently Required?

The low mass emissions methodology in § 75.19 provides two options for determining the appropriate default NO_X emission rate for a unit. The owner or operator may either use a generic default emission rate from Table LM–2, or determine a fuel- and unit-specific default NO_X emission rate by performing emission testing, using appendix E test methodology. If the testing option is selected, § 75.19(c) specifies how to determine the default emission rate. For uncontrolled units, the default emission rate is the highest rate obtained from the emission testing, multiplied by 1.15. The reason for the 1.15 multiplier is to prevent underestimation of emissions, since the NO_X emission rate can vary at a given load. For units with NO_X emission controls of any kind, the default emission rate is the higher of: (a) the highest rate from the emission testing multiplied by 1.15; or (b) 0.15 lb/mmBtu. The reason for specifying a ''floor'' emission rate value of 0.15 lb/mmBtu for units with NO_X emission controls is principally to ensure that large units with a high potential to emit and with controls such as SCR and selective non-catalytic reduction (SNCR) would not use the LME provisions to estimate emissions. Units with these

controls can achieve emissions rates much lower than 0.15 lb/mmBtu and therefore would not want to use the 0.15 lb/mmBtu floor under the LME provisions to report their emissions. EPA believes that for units with such controls, continuous NO_X emission monitoring is the preferred way to determine that a unit achieves its target control level. This is because the NO_X emission reductions achieved with these controls can vary significantly with the manner in which the controls are operated and the manner of proper operation is difficult to document and demonstrate.

After promulgating the LME provisions on October 27, 1998, EPA continued to investigate the causes of variability in NO_X emission rates in combustion turbines by reviewing literature, reviewing test results, analyzing CEMS data for turbines, and discussing turbine operation with turbine and utility experts (see Docket A–2000–33, Item II–B–1). The result of the investigation was confirmation that temperature, pressure, and, in particular, humidity affect the NO_X emission rate in combustion turbines. The investigation revealed that several empirically-derived mathematical algorithms have been developed to correct a measured NO_X concentration to a theoretical NO_X concentration at a different temperature, pressure, and humidity, including the equation in subpart GG, Standards of Performance for Stationary Gas Turbines (40 CFR 60.335).

EPA also investigated the claims of industry representatives who asked the Agency to consider allowing the use of controlled fuel- and unit-specific NO_X emission rates below the 0.15 lb/mmBtu minimum for turbines with water injection, steam injection, or water/fuel emulsion. The representatives had stated that if the water-to-fuel ratio were monitored each hour, the use of a fuel- and unit-specific default for times when the water-to-fuel ratio was within acceptable limits would not underestimate emissions. To substantiate these claims, EPA reviewed data from CEMS installed at turbines with water-and-steam injection and water/fuel emulsion. As a result of this review, EPA concluded that if the water-to-fuel ratio is monitored, effective and constant control of NO_X will be achieved, with little chance of underestimation of NO_X emissions (*see* Docket A–2000–33, Item II–B–1).

b. What Changes Were Proposed?

As a result of these two investigations, EPA proposed the following revisions to § 75.19(c) on June 13, 2001. First, EPA proposed adding a new requirement for certain turbines to correct measured NO_X concentrations to ambient conditions of temperature, pressure, and relative humidity at the time of the emission test. This proposed correction (Equation LM–1a in § 75.19(c)(1)(iv)(A)(4)) would apply only to uncontrolled diffusion flame style turbines. It would compensate for temperature and humidity effects on NO_X formation by correcting the measured NO_X concentrations at the test conditions to the average annual temperature, atmospheric pressure, and humidity at the location of the turbine. It also would prevent underestimation or overestimation of NO_X emissions for uncontrolled diffusion flame turbines and would remove the requirement to multiply the measured NO_X emission rates for such turbines by 1.15.

Second, EPA proposed revising § 75.19(c)(1)(iv)(H)(1) to allow the use of measured fuel- and unit-specific NO_X emission rates for units with water or steam injection (and no other type(s) of add-on NO_X controls), even if the measured emission rates are below 0.15 lb/mmBtu. This proposed change would remove the current rule requirement that all tested emission rates below 0.15 lb/mmBtu must be adjusted upward to a default value of 0.15 lb/mmBtu. The proposed change would require units with steam or water injection to monitor the water-to-fuel or steam-to-fuel ratio in order to give assurance that the emission controls are operating properly.

c. What Changes is EPA Finalizing?

EPA received numerous substantive comments on the proposed changes to § 75.19(c). Based on these comments, the Agency finalizes the proposed revisions to § 75.19(c)(1)(iv)(A)(4) with only minor editorial changes, but modifies the proposed changes to § 75.19(c)(1)(iv)(H)(1). Today's rule requires fuel- and unit-specific NO_X emission rates for uncontrolled diffusion flame turbines to be corrected to ISO standard conditions, and removes the requirement to multiply the tested emission rates by 1.15. The final rule also allows units that use steam (or water) injection and have no other add-on controls, or DLN technology and have no other add-on controls, to use the highest tested emission rate for reporting purposes during controlled hours instead of reporting 0.15 lb/mmBtu. Units equipped with SCR or SNCR controls still must report the ''floor'' NO_X emission rate of 0.15 lb/mmBtu if it is higher than the tested emission rates, with one exception: if the unit uses steam (or water) injection or DLN technology in addition to the SCR or SNCR controls, then the highest tested emission rate may be reported for controlled hours in lieu of reporting 0.15 lb/mmBtu, provided that the emission testing is performed either upstream of the SCR (or SNCR) or at a time when the SCR (or SNCR) is not in operation.

Discussion

Two commenters objected to the provision requiring units that use NO_X emission controls other than water or steam injection to adjust their tested emission rates upward to 0.15 lb/mmBtu (Clean Air Energy; Exelon Corporation (Exelon)). In particular, the commenters noted that for combustion turbines using DLN control technology, the 0.15 lb/mmBtu ''floor'' emission rate is several orders of magnitude higher than the guaranteed emission levels from such units. One of the commenters recommended that EPA treat turbines with DLN control in the same manner as turbines that use water or steam injection (Exelon). That is, EPA should allow the highest tested emission rate to be reported during hours in which parametric data are available to document proper operation of the DLN controls. The commenter provided supplementary information, suggesting parameters that could be monitored to ensure that the DLN is operating in the low-NO_X, or premixed, mode.

Based on the supplementary information provided by the commenter and discussions with turbine experts (see Docket A–2000–33, Item IV–A–1), EPA has decided to incorporate the commenter's suggestion to treat LME units with DLN technology in the same manner as LME units with water-and-steam injection. Today's rule allows the highest emission rate from the appendix E tests to be reported as the default NO_X emission rate for the unit, if proper operation of the emission controls is documented. Section 75.19(c)(1)(iv)(H) of the final rule specifies that for DLN technology, ''proper operation'' of the emission controls means that the unit is in the low-NO_X or premixed combustion mode and fired with natural gas. Evidence of operation in the low-NO_X or premixed mode is provided by monitoring the appropriate turbine operating parameters. These parameters may include percentage of full load, turbine exhaust temperature, combustion reference temperature, compressor discharge pressure, fuel and air valve positions, dynamic pressure pulsations, internal guide vane (IGV) position, and flame detection or flame scanner condition. The acceptable values and ranges for all parameters

monitored must be specified in the monitoring plan for the unit, and the parameters must be monitored during each unit operating hour. If one or more of these parameters is not within the acceptable range or at an acceptable value in a given operating hour, or if the unit is fired with oil, the fuel- and unit-specific NO_X emission rate may not be used for that hour and the appropriate default NO_X emission rate from Table LM–2 must be reported, instead.

Two commenters recommended that EPA revise §§ 75.19(c)(1)(iv)(C)(*4*) and (c)(1)(iv)(C)(*6*) to allow units with NO_X emission controls of any kind to use the Federally-enforceable permit limit to determine the default NO_X emission rate for an LME unit, and then to use the required periodic testing under title V of the CAA to verify that the emission limit is being met (Class of '85 Regulatory Response Group (Class of '85); Reliant Energy (Reliant)). EPA did not incorporate the commenters' suggested approach, although the Agency notes that today's rule provides some relief to controlled units from the requirement to use 0.15 lb/mmBtu as the default emission rate when the tested NO_X emission rates are less than 0.15 lb/mmBtu. In the final rule, that requirement applies only to units that use SCR or SNCR for NO_X emission control. In all other cases, LME units with NO_X emission controls may use their highest tested emission rate as the default value during controlled hours.

For add-on controls such as SCR or SNCR, proper operation of the controls depends on whether the desired chemical reaction necessary to reduce NO_X emissions is actually occurring which, in turn, depends on many factors (*e.g.,* whether the catalyst is active, whether the reagent injection rates are appropriate). Other than direct measurement of emissions using a CEMS or reference method, there is no known way to ensure that the catalyst or injected reagents are producing the expected emission reductions. Periodic title V emission testing, as recommended by the commenter, would not provide adequate assurance that the SCR or SNCR controls are operating properly on a continuous basis; because the test is ''periodic,'' at best it shows these controls are working when the test is being performed. Therefore, the final rule retains the requirement to use the 0.15 lb/mmBtu ''floor'' NO_X emission rate for units equipped with SCR or SNCR. EPA notes, however, that if a unit uses SCR (or SNCR) and steam/water injection, the final rule allows the highest tested emission rate (provided it is less than 0.15 lb/mmBtu) to be used in lieu of 0.15 lb/mmBtu, if the steam/water injection is operational during the emission testing and if the testing is either performed upstream of the SCR (or SNCR) or with the SCR (or SNCR) not operating. Similarly, for a unit that controls NO_X emissions using DLN technology and SCR (or SNCR), the highest tested emission rate may be used provided that it is less than 0.15 lb/mmBtu, and the testing is performed when DLN technology is in use and the SCR (or SNCR) is not operating (*see* §§ 75.19(c)(1)(iv)(C)(*7*) and 75.19(c)(1)(iv)(C)(*8*)).

4. Does Today's Rule Allow Testing To Be Done at Fewer Than Four Load Levels To Determine Fuel- and Unit-Specific NO_X Emission Rates for Low Mass Emissions Units?

Background

a. What Is Currently Required?

The current LME provisions in § 75.19(c)(1)(iv)(A) require testing at four load levels, using the test methodology in appendix E of part 75, for all units which opt to determine a default fuel- and unit-specific NO_X emission rate. Industry representatives have asked that this requirement be waived for units which operate at a single load only.

b. What Changes Were Proposed?

In the June 13, 2001 proposed rule, EPA proposed and solicited comments on two options as alternatives to the four load testing requirement for LME units. Option 1 would require the first appendix E test to be performed at four loads, with future single load re-tests at the load level at which the highest emission rate was found. Option 2 would allow single-load testing for units that provide a demonstration that the unit operates at a single load level.

In the preamble to the proposed rule, EPA expressed a preference for Option 2. Therefore, the Agency proposed adding a new section, (I), to § 75.19(c)(1)(iv) which is consistent with Option 2. The proposed revisions would conditionally allow single-load testing to be performed if the owner or operator demonstrates that the unit has operated at a single load level for at least 85 percent of the time in the three years prior to the emission test. Turbines that operate at a set-point temperature and not at a particular load level would also be conditionally allowed to perform single level testing, if it can be demonstrated that the unit has operated within ± 10 percent of the set-point temperature for at least 85 percent of the time in the three years prior to the emission test. EPA also proposed in § 75.19(c)(1)(iv)(I) that for a set-point turbine which normally operates at base load but is capable of operating at a higher (peak) load level, if the emission testing is only performed at base load, then the fuel- and unit-specific NO_X emission rate obtained from the testing would have to be adjusted upward during peak load operation by using a multiplier of 1.15 to ensure that emissions are not underestimated.

c. What Changes Is EPA Finalizing?

EPA received numerous substantive comments on the proposed options for reducing the number of required load levels at which testing is required to determine fuel- and unit-specific NO_X emission rates for LME units. After carefully considering these comments, the Agency has decided to incorporate both of the proposed Options 1 and 2 into the final rule. These provisions are found in §§ 75.19(c)(1)(iv)(I) and (J) of today's rule. EPA notes that Option 2 has been modified somewhat from the proposal. The final rule allows testing of LME units to be performed at either one, two, or three loads instead of four, based on the results of a historical load analysis for the previous three years (or three ozone seasons for sources that report emissions data only for the ozone season). The testing is required at however many load levels cumulatively represent at least 85 percent of the unit operating hours in the previous three years (or ozone seasons).

Discussion

One commenter supported proposed Option 2, but requested that EPA allow the demonstration of single-load operation to be made using only ozone season data for sources that report data on an ozone season-only basis (Massachusetts Department of Environmental Protection (Massachusetts DEP)). Another commenter favored Option 1 over Option 2, because Option 2, although ''reasonable,'' could only be used by a subset of LME units (NorthWestern Energy & Communications Solutions (NorthWestern)). Two commenters recommended that EPA allow testing to be done at two loads if historical load data for the unit demonstrate consistent operation at two load levels for at least 85 percent of the time (Massachusetts DEP, Machaver).

EPA has decided to include both proposed Options 1 and 2 in today's rule. The Agency believes that this provides sufficient flexibility for the various types of LME units to allow them to qualify for reduced testing requirements. The final rule incorporates the suggestion of the

commenters to allow the 85 percent criterion to be applied on a cumulative operating load basis, *i.e.,* perform the testing at the number of load levels that cumulatively account for 85 percent of the unit operating hours in the three years prior to the emission test. Today's rule also allows the historical load analysis to include only ozone season data for sources that report emissions on an ozone season-only basis. These new rule provisions are found in §§ 75.19(c)(1)(iv)(I) and (J).

C. Quality Assurance/Quality Control

1. What Changes to the Method of Determining the NO_X MPC, MEC, Span, and Range Are Finalized in Today's Rule?

Background

a. What Is Currently Required?

In recent years EPA has received many questions, pertaining especially to new combustion turbines, about the way in which the maximum potential concentration (MPC) and maximum expected concentration (MEC) are determined for NO_X and how the instrument span and range values are set for NO_X monitors. Some of the questioners have requested additional options for MPC and MEC determinations and claim that part 75 does not address dry low-NO_X (DLN) control technology, which is being used on many new turbines. Others have questioned the appropriateness of the default NO_X MPC value of 50 ppm in Table 2–2 of appendix A for new oil- and gas-fired combustion turbines.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to add new options for determining the NO_X MPC and MEC values, principally with combustion turbines in view. The proposed rule would allow the owner or operator to use a reliable estimate of the unit's uncontrolled emissions obtained from the manufacturer as the MPC value. For units that have add-on emission controls or that use DLN technology, the Federally-enforceable permit limit could be used as the MEC.

EPA also proposed replacing the 50 ppm default NO_X MPC value in Table 2–2 for new combustion turbines with two new values: (a) 150 ppm for units that are permitted to fire only natural gas; and (b) 200 ppm for units permitted to fire both gas and oil. EPA believes, based on a preliminary data analysis of emissions from new combustion turbines, that these values are much more representative of actual NO_X emissions from turbines during unit startup and periods when the emission controls are not operational (*see* Docket A–2000–33, Item II-B–1).

c. What Changes Is EPA Finalizing?

EPA received no adverse comments on these proposed rule changes. Therefore, today's rule finalizes as proposed the new options for determining NO_X MPC and MEC, and the 150 ppm and 200 ppm default MPC values for new combustion turbines. The final rule also incorporates two important changes to the general approach for determining MPC, MEC, span, and range based on recommendations made by the commenters. First, today's rule allows CEMS data from a monitor certified under 40 CFR part 60 or under a State program to be used to make the initial MPC or MEC determinations. Second, for units with a dual span requirement for SO_2 or NO_X, the final rule places an upper limit on the full-scale range setting of the low-scale analyzer in cases where the owner or operator selects the default high range option in lieu of operating and maintaining a high monitor range. Today's rule restricts the full-scale range of the low-scale analyzer to five times the MEC value (where the MEC is rounded upward to the next highest multiple of 10 ppm).

Discussion

Two commenters supported the proposed new option to allow the use of a reliable manufacturer's estimate of a unit's uncontrolled emissions as the MPC value (UARG; Dynegy, Inc. (Dynegy)). No comments were received on the proposal to use the permit limit as the MEC for a unit with emission controls, and no comments were received on the proposed default MPC values for new combustion turbines. Therefore, in the absence of adverse comments these provisions are finalized for the reasons stated in the proposal. While these rule changes could require owners and operators of combustion turbines currently using the 50 ppm NO_X MPC value from Table 2–2 of appendix A to change their MPC and span values, the Agency believes that many have already done so in their required annual re-evaluations of span, range, MPC, and MEC values for each monitor. In other words, the owners and operators of new combustion turbines using the 50 ppm MPC value from Table 2–2 have likely found, upon analysis of actual data, that the value is unrealistically low and requires upward adjustment. The Agency expects that this rule change will primarily affect new units, rather than existing units. However, since there may be some existing units still using the 50 ppm MPC value, and since span changes may require new calibration gases to be purchased and, in some instances, may necessitate analyzer replacement, EPA has provided additional time in the rule language from the effective date of today's rule for owners and operators to implement the new MPC provision (*see* Section V., Rule Implementation, of this preamble).

EPA received additional comments on the span and range provisions of part 75. Two of these, provided by the same commenter (Machaver), are incorporated into the final rule. The commenter asked EPA to consider expanding the range of methods for establishing an initial MPC or MEC value. The commenter stated that especially for newly-affected units, the use of ''reasonable, relevant, and appropriate'' data, such as CEMS data from a part 60 monitor or historical emission test data, should be allowed. EPA believes that this suggestion has merit, particularly in view of the many sources that will soon be required to implement the monitoring provisions of part 75 under the NO_X SIP Call. Therefore, today's rule allows any available quality-assured CEMS data (whether from a part 75 monitor, a part 60 monitor, or one that meets State requirements) to be used for the initial MPC and MEC determinations. In as much as these initial determinations are self-correcting (*i.e.,* appendix A §§ 2.1.1.5 and 2.1.2.5 require an annual review) and there are sufficient incentives to ensure proper specification (*i.e.,* exceeding a full-scale range necessitates substitution of conservative emissions factors under appendix A § 2.1.2.5(b)), the Agency sees no harm introduced by providing this additional flexibility. The new rule provision is found in sections 2.1.1.1(b), 2.1.1.2(c), 2.1.2.1(e), and 2.1.2.2(c) of appendix A. Application of these data is limited to these initial MPC and MER determinations. Continuous emission monitoring systems used for part 75 reporting must meet the certification and ongoing quality assurance requirements of part 75.

The commenter also recommended that EPA set an upper limit on the low-scale measurement range for dual span units using the ''default high range'' option. For sources that elect to use the default high range option, it is advantageous to set the range of the low measurement scale as high as possible to capture emission ''spikes'' and to minimize reporting the default high range value of twice the MPC. However, if the low range is set inappropriately high, this will result in the majority of the data being recorded at the bottom

end of the measurement scale during normal, controlled, unit operation. Data accuracy suffers at the low end of a measurement scale due to a poor signal-to-noise ratio. To help ensure that this does not happen, the commenter recommended capping the low-scale range at five times the MEC, where the MEC is rounded to the nearest 10 ppm. EPA concurs with this suggested approach. Today's rule adds the provision to sections 2.1.1.4(g) and 2.1.2.4(f) of appendix A.

2. What Changes to the 7-Day Calibration Error Test Are Finalized?

Background

a. What Is Currently Required?

The 7-day calibration error test described in sections 6.3.1 and 6.3.2 of appendix A of part 75 is required only for initial certification, recertification, and occasionally as a diagnostic test. It is not a routine, required, periodic quality assurance (QA) test. The current rule specifies that the 7-day calibration error test data must be recorded while the unit is operating. For peaking units, the requirement for the unit to be operating during the test can be problematic. Because of the sometimes infrequent or unpredictable nature of peaking unit operation, the 7-day test may take weeks or even months to complete.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed revising the 7-day calibration error test requirement for monitors installed on peaking units, requiring data to be recorded with the unit operating for only three of the seven test days. The unit would not be required to be operating for the other four days of the test.

c. What Changes Is EPA Finalizing?

EPA received numerous comments on the proposed revisions to the 7-day calibration error test procedure. After carefully considering the comments, the Agency has decided to remove the 7-day calibration error test requirement for peaking units and for SO_2 and NO_X monitors with span values of 50 ppm or less. If a unit should lose its peaking status, it would also lose its 7-day calibration error test exemption. The owner or operator would then be required to perform diagnostic 7-day calibration error tests of all installed monitors by December 31 of the following year. Today's rule reflects these changes, in sections 6.3.1 and 6.3.2 of appendix A and in § 75.20(c).

Discussion

EPA received comments from five different commenters on the proposed revisions to the 7-day calibration error test. Four of the commenters found the scope of the proposed change to be too narrow as it only applies to peaking units (UARG, Dynegy, KVB, Machaver). One commenter stated the opinion that part 75 data quality would not be jeopardized if the 7-day calibration error test were eliminated for peaking units, if not for all units (Dominion). Two other commenters provided the following suggestions: (1) Eliminate the 7-day calibration error test for all units; or (2) allow combustion turbines to perform the test off-line for all 7 days; or (3) restrict the test to zero-level calibrations for combustion turbines (UARG, Dynegy). Finally, two commenters noted that many monitoring systems cannot pass the 7-day test using the proposed methodology, i.e., using a combination of off-line and on-line calibrations, because of differences in temperature and pressure between off-line and on-line conditions (UARG, Machaver).

EPA rejected the commenters' suggestion to eliminate the 7-day calibration error test for all affected units. The Agency believes that the test has value for frequently operated units, and the test can, in most instances, be completed in seven consecutive calendar days. The purpose of the 7-day test is to ensure that from day-to-day, a continuous emission monitor does not drift excessively while it is measuring emissions at stack conditions (*e.g.,* stack pressure and temperature). The test provides a one-time demonstration that a monitor is capable of consistently passing daily calibrations at a specification twice as stringent as the allowable calibration error for daily monitor operation. Monitors that cannot meet this requirement are disqualified for use under part 75. When the test can be completed in seven consecutive days, it achieves its purpose.

EPA considered removing the 7-day calibration error test requirement for all combustion turbines, as suggested by the commenters. However, the Agency did not incorporate the commenters' recommendation since many combustion turbines are operated as base-load or cycling units. Because such units operate frequently, the 7-day calibration error test is appropriate and must be performed.

EPA rejected the commenter's suggestion to allow combustion turbines to perform the 7-day calibration error test while the unit is off-line. Performing the test off-line defeats the purpose of the test, which, as previously noted, is to assess the calibration drift of a monitor over a 7-day period while it is in thermal equilibrium with its stack environment. The Agency also rejected the commenter's recommendation to perform only a calibration with zero-level gas on each day of the test. EPA does not believe that it is technically justifiable to perform only half of the normal daily calibration sequence and to omit the other half. However, EPA does agree with the commenters who pointed out that performing the 7-day test using a combination of off-line and on-line calibrations would not be a viable solution for many monitoring systems.

In view of these considerations, EPA has decided to remove the 7-day calibration error test requirement for peaking units and also for SO_2 and NO_X monitors with span values of 50 ppm or less. With regard to peaking units, the Agency's decision is based principally on the difficulties associated with performing the 7-day calibration error test in a timely manner for such units. Because peaking units operate infrequently, it is often difficult to complete a 7-day calibration error test within a reasonable time since the test must be done with the unit in operation. In cases where a 7-day calibration error test may take several weeks or months to complete, the test loses its meaning. Today's rule specifies that a peaking unit remains exempt from the 7-day calibration error test requirement as long as it continues to re-qualify as a peaking unit from year-to-year or from ozone season-to-ozone season. However, if at the end of a particular year or ozone season peaking unit status is lost, the owner or operator must then perform diagnostic 7-day calibration error tests of all continuous emission monitors installed on the unit by December 31 of the following year.

EPA's decision to exempt SO_2 and NO_X monitors with span values of 50 ppm or less from the 7-day calibration error test is consistent with changes made in today's rule to section 2.1.4(a) of appendix B. As discussed below, the final rule lowers the allowable calibration error for daily monitor operation to 5 ppm for SO_2 and NO_X monitors with span values less than or equal to 50 ppm. Since the alternate performance specification in section 3.1 of appendix A for the 7-day calibration error test of SO_2 and NO_X monitors is also 5 ppm, the changes to appendix B will, in effect, require SO_2 and NO_X monitors with span values less than or equal to 50 ppm to meet the 7-day calibration error test specification every day. This makes it unnecessary to

perform 7-day calibration error testing on these monitors.

3. What Changes to the QA/QC Requirements for Low-Emitting Sources Are Finalized?

Background

a. What Is Currently Required?

Part 75 requires owners and operators of units with SO_2 and NO_X monitors to perform daily calibration error tests of these monitors. The allowable calibration error is currently 5 percent of the span value. However, section 2.1.4(a) in appendix B of part 75 provides an alternate daily calibration specification for low emitters of SO_2 and NO_X. The alternate low-emitter specification (for span values less than 200 ppm) is 10 ppm, based on the absolute value of the difference between the tag value of the calibration gas and the instrument response. For most low-emitting sources, the alternate 10 ppm specification is reasonable and provides relief from the 5 percent of span requirement, which is often too stringent at low span values. However, for very low span values, the 10 ppm alternate specification needs to be tightened. This is especially important because many new gas turbines are being built and these units have very low NO_X emissions, often in the 0–10 ppm range.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to modify the alternate calibration error specification in section 2.1.4(a) of appendix B for daily operation of SO_2 and NO_X monitors. The 10 ppm alternate specification would be retained for span values between 50 and 200 ppm. However, for span values less than or equal to 50 ppm, the alternate specification would be lowered to 5 ppm. EPA believes that a daily calibration error limit of 5 ppm is both reasonable and achievable in view of the measurement capability of today's gas analyzers. Also, 5 ppm is the alternate calibration error performance specification in section 3.1(b) of appendix A for initial certification of SO_2 and NO_X monitors.

c. What Changes Is EPA Finalizing?

EPA received only one comment on the proposed modification of the alternate calibration error specification. The comment was supportive (Clean Energy Group). Therefore, today's rule finalizes the proposed change to section 2.1.4(a) of appendix B lowering the daily calibration error specification to 5 ppm for SO_2 and NO_X monitors with span values of 50 ppm or less.

4. What Changes to the Stack Flow-to-Load Ratio Test Are Finalized?

Background

a. What Is Currently Required?

In the May 26, 1999 rule revisions, EPA added a new quarterly QA test for flow monitors to part 75: the flow-to-load ratio test. Since promulgation, EPA has received many questions about the test methodology relating both to the procedural aspects of how the data analysis is done and to the consequences when the test is failed. As a result, EPA believes it is necessary to clarify the test procedures and to re-evaluate the issue of data validation when the test is failed.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed revising the flow-to-load test methodology by allowing the data exclusions listed in section 2.2.5(c) of appendix B to be taken before analyzing the quarterly flow-to-load data. The current rule appears to require an initial data analysis with no exclusions and to allow owners and operators to claim the data exclusions only when the first analysis results in a failed test. Proposed section 2.2.5(c) also would clarify the issue of co-firing as it pertains to data exclusions. Units that co-fire different fuels as part of normal operation could claim flow-to-load test data exclusions for hours in which fuels were not co-fired, if the reference flow relative accuracy test audit (RATA) at normal load was done while co-firing. Conversely, if the reference flow RATA was done while firing a single fuel, flow-to-load test data exclusions could be claimed for hours in which fuels were co-fired. The proposed rule would also add a statement to section 6.5(a) of appendix A requiring that units which co-fire fuels as the predominant mode of operation perform RATAs while co-firing.

The proposal would change the method of data validation following a flow-to-load ratio test failure. Section 2.2.5(c)(8) of appendix B would allow the flow rate data to be declared conditionally valid, rather than invalid, when a flow-to-load test is failed, pending the results of a follow-up investigation and/or a RATA. This would allow data validation in case a false positive is obtained with the flow-to-load test. If the investigation fails to reveal a problem and a confirming RATA is passed hands-off, no data loss would be incurred. The timeline for investigating a flow-to-load test failure would also be changed from within 2 weeks to within 14 unit operating days.

The proposal would also clarify the instructions for multiple stack configurations and allow the data to be analyzed in one of two ways: (1) using combined flow and average unit load; or (2) using the flow in each stack and the corresponding unit load. Finally, section 7.8 in appendix A of part 75 would be revised to exempt non-load-based units (i.e., units that do not produce electrical output or steam load) from the flow-to-load ratio test.

c. What Changes Is EPA Finalizing?

EPA received supportive comments from one commenter on the proposed revisions to the flow-to-load ratio test methodology (UARG). No adverse comments were received. Therefore, today's rule finalizes the changes for the reasons stated in the proposal.

5. What Special QA Provisions Are Finalized for Units That Do Not Produce Electrical Output or Steam Load?

Background

a. What Is Currently Required?

Units subject to the monitoring and reporting requirements of part 75 must account for their emissions on a continuous basis. Most units use CEMS for this purpose. Part 75 requires periodic RATAs of all CEMS to demonstrate that the data recorded by the monitoring systems accurately represent the SO_2, NO_X, and CO_2 emissions from the affected unit. RATAs of gas and flow monitors are required for initial certification and either semiannually or annually thereafter.

Section 6.5.1 of appendix A to part 75 requires that RATAs of gas monitors be done at a single ''normal'' load level. Section 6.5.2 of appendix A and section 2.3.1.3 of appendix B specify the load levels for flow RATAs. In general, flow monitor RATAs are performed at multiple load levels (either two or three) with a few exceptions (e.g., for flow monitors installed on peaking units, only single-load RATAs are required). For multiple-load flow RATAs, at least one of the tested load levels must be the ''normal'' load level.

The method of establishing the normal load level is found in section 6.5.2.1 of appendix A. First, the owner or operator must determine the ''range of operation'' for the unit or stack. The range of operation extends from the minimum safe, stable load to the maximum sustainable load. Next, the range of operation is divided into three load levels. The first 30 percent of the range of operation is considered to be the ''low'' load level, the next 30 percent of the range is the ''mid'' load level, and the remaining 40 percent of

the range is the ''high'' load level. The ''normal'' load level is determined by performing an analysis of at least four quarters of representative historical load data. From these data a distribution graph, such as a histogram, is constructed showing the percentage of the time that each load level has been used historically. The most frequently used load level (low, mid, or high) is automatically designated as the normal load level. The owner or operator may opt to designate the next most frequently used load level as a second normal load. Thus, the appropriate load levels for the required RATAs of the gas and flow monitors are established.

Under the NO_X SIP Call, some sources that do not produce electrical output or steam load, such as cement kilns or refinery process heaters, become subject to the monitoring and reporting requirements of part 75. Consequently, these sources will be required to perform periodic RATAs of their gas and flow monitors. Because these sources do not produce electrical or steam load, the concept of performing ''normal load'' RATAs cannot be applied to them. Therefore, an alternative RATA approach is needed for these non-load-based units.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to revise section 6.5.2.1 of appendix A to part 75 by adding a method of establishing the proper operating levels at which to perform RATAs for units that do not produce electrical output or steam load (e.g., cement kilns and process heaters).

The proposed RATA approach for units that do not produce electrical or steam load would be based on an ''operating level'' concept, rather than a ''load level'' concept. The method of determining the normal operating level for a non-load-based unit would be much the same as the previously described method for determining the normal load level for a load-based unit. The owner or operator would determine the range of operation, divide it into three operating levels, and perform a data analysis to establish the ''normal'' (i.e., most frequently used) operating level. The only significant difference between the load-based and non-load-based methodologies is that instead of defining the range of operation in units of electrical or steam load (i.e., in megawatts or klb/hr of steam), the range of operation of the non-load-based unit would be defined in units of stack gas velocity in ft/sec. The range of operation would extend from the minimum expected velocity to the maximum potential velocity. These minimum and maximum gas velocities could either be determined from reference method test data or by using Equation A–3a or A–3b (as applicable) in section 2.1.4.1 of appendix A to part 75.

Once the boundaries of the range of operation are established and the normal operating load level has been identified, the owner or operator of a non-load-based unit would perform the required gas and flow RATAs in essentially the same manner as for a load-based unit. The only difference is that in many sections of part 75 the term ''operating level'' would replace the term ''load'' or ''load level.'' The proposed rule would modify the text in several sections of part 75 (*e.g.,* by adding a parenthetical expression such as ''(or normal operating level)'' after the term ''normal load'') to indicate that the provisions apply to both load-based and non-load-based units.

c. What Changes Is EPA Finalizing?

EPA received adverse comments on the proposed approach to determining the range of operation, normal operating level, and flow RATA requirements for non-load-based units, i.e., units that do not produce electrical output or steam load. After careful consideration of these comments, EPA has modified the proposed approach. The requirement to define the range of operation and the low, mid, and high operating levels in terms of stack gas velocity (ft/sec) is being finalized in this action, with only one minor change: the owner or operator may use 0.0 ft/sec as the ''minimum potential velocity.'' However, EPA is not adopting the proposed requirement to perform a historical analysis of flow rate data to establish the ''normal'' operating level. Instead, today's final rule specifies that the normal operating level for a non-load-based unit is determined using sound engineering judgment and operating experience with the unit and process, and supported with documentation in the monitoring plan. In addition, new section 6.5.2(e) of today's rule allows the owner or operator of a non-load-based unit to obtain relief from three-load flow RATA testing, if an acceptable technical justification is provided in the monitoring plan. If the owner or operator can satisfactorily demonstrate that the process operates only at one level, then only single-level flow RATAs would be required for certification and on-going quality assurance. If the process is demonstrated to operate at two distinct levels, then two-level flow RATAs would be required.

Discussion

EPA received comments from only one commenter regarding the proposed method of determining range of operation, normal operating level, and the appropriate operating levels for flow RATAs (APCA). The commenter stated two objections to the proposed rule provisions: (1) that the ''maximum potential velocity'' approach is not applicable to cement kilns; and (2) that since cement kilns operate at one level, only single-level flow RATAs should be required.

EPA does not agree with the commenter's claim that the concept of maximum potential velocity cannot be applied to a cement kiln. The Agency notes that the commenter did not explain why the proposed methodology will not work for cement kilns. EPA believes that for any non-load-based unit, an estimate of the highest stack gas velocity during normal operation should be easily obtainable, using EPA Method 2 (see 40 CFR 60, Appendix A). However, EPA has reconsidered the proposed approach to determining the normal operating level and establishing the RATA levels for flow monitors installed on such units. For industrial processes, such as cement manufacturing, which often have only one distinct operating level, it may not be appropriate to require a historical data analysis to establish the normal operating level, or to require three-level flow RATAs to be performed.

In view of these considerations, today's rule finalizes the requirement for non-load-based units to define the range of operation in terms of stack gas velocity as proposed. However, the velocity information is only used to define the operating range and the low, mid, and high operating levels. EPA is not adopting the proposed requirement for non-load-based units to determine the normal operating level by analyzing historical flow rate data. Instead, today's rule requires that the normal operating level be established using sound engineering judgment and process operating experience. Regarding the appropriate number of levels for flow RATAs, today's rule requires non-load-based units to perform flow RATA testing at the same number of load levels as are specified for load-based units in section 2.3.1.3(c) of appendix B (i.e., three levels for certification, two levels for routine quality-assurance) unless the owner or operator submits a technical justification to the permitting authority with the hardcopy of the initial monitoring plan for the unit, demonstrating that the unit operates at only one level. Today's rule adds this

option in a new paragraph, (e), to section 6.5.2 of appendix A. The technical justification must include appropriate documentation and data to demonstrate that the process operates at only one level. If the justification is acceptable to the permitting authority, then only single-level flow RATAs would be required for initial certification, recertification, and on-going quality assurance. For non-load-based processes that operate at only two distinct levels, section 6.5.2(e) allows a similar justification to be submitted as an option to the three-level flow RATA testing.

D. Appendix D

1. What Changes to the Definitions of ''Pipeline Natural Gas'' and ''Natural Gas'' Are Finalized?

Background

a. What Is Currently Required?

The definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2 state that a gaseous fuel must meet a two-fold requirement to qualify as one of these fuels: the fuel must meet a hydrogen sulfide (H_2S) content limit (0.3 gr/100 scf for pipeline natural gas and 1.0 gr/100 scf for natural gas) and the H_2S must constitute at least 50 percent of the fuel's total sulfur content. Appendix D of part 75 does not explain how to comply with the second of these two requirements (*i.e.,* the H_2S as a percentage of total sulfur). Further, industry members have expressed concern that this requirement cannot be implemented in a fair and consistent manner. For example, a very clean fuel with 0.1 gr/100 scf of H_2S and 0.3 gr/100 scf of total sulfur would not qualify as pipeline natural gas, because H_2S is less than 50 percent of the total sulfur content, but a fuel with three times more H_2S and twice as much total sulfur (0.3 gr/100 scf of H_2S and over 0.6 gr/100 scf of total sulfur) would qualify as pipeline natural gas under the current rule.

In response to the industry's concerns over the definitions of pipeline natural gas and natural gas, EPA issued interim guidance on June 12, 2000, discussing how sources could demonstrate compliance with the existing definitions (see Docket A–2000–33, Item IV–A–5). As explained in the guidance, through its authority under § 75.66, EPA would allow owners or operators to comply by meeting a total sulfur limit (0.6 gr/100 scf for pipeline natural gas or 2.0 gr/100 scf for natural gas), in lieu of documenting that H_2S constitutes at least 50 percent of the total sulfur content.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed revising the definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2. All references to H_2S content would be removed and these fuels would be defined in terms of total sulfur content. The proposed total sulfur content values would be 0.5 gr/100 scf for pipeline natural gas and 20.0 gr/100 scf for natural gas. The value of 20.0 gr/100 scf is the maximum total sulfur content allowed under most contracts for transmitting pipeline natural gas and allowed under most tariffs established with the Federal Energy Regulatory Commission.

For fuels that qualify as pipeline natural gas, a default SO_2 emission rate of 0.0006 lb/mmBtu would be used to quantify SO_2 emissions, and for fuels that qualify as natural gas, a default SO_2 emission rate would be calculated based on Equation D–1h in appendix D. Equation D–1h would be revised and based upon the total sulfur content of the fuel, rather than the H_2S content.

c. What Changes Is EPA Finalizing?

EPA received no adverse comments on the proposed revisions to the definitions of pipeline natural gas and natural gas. Therefore, today's rule finalizes the revised definitions as proposed.

Discussion

EPA received comments from four commenters on the proposed revisions to the definitions of pipeline natural gas and natural gas (Class of '85, XCEL Energy, Clean Energy Group, UARG). All four commenters favored the proposed changes. One commenter noted that eliminating the hydrogen sulfide content limit would make the use of appendix D more attractive and would reduce the risk of unintentional violations of the monitoring requirements (Class of '85). In view of these supportive comments, EPA finalizes the proposed definitions of pipeline natural gas and natural gas without modification.

2. How Does Today's Rule Change the Method by Which a Gaseous Fuel Qualifies As ''Pipeline Natural Gas'' or ''Natural Gas''?

Background

a. What Is Currently Required?

The part 75 requirements for demonstrating that a particular gaseous fuel qualifies as pipeline natural gas or natural gas are found in sections 2.3.1.4 and 2.3.2.4 of appendix D. Compliance with the hydrogen sulfide content limit must be documented through one of five sources of information: (1) a fuel purchase or pipeline transportation contract; (2) vendor certification based on fuel sampling; (3) one year of monthly sampling; (4) one year of sampling each shipment or lot of fuel (for fuels delivered in shipments or lots); or (5) a demonstration consisting of 720 hours of sampling.

b. What Changes Were Proposed?

As discussed in the previous question, on June 13, 2001, EPA proposed revising the definitions of pipeline natural gas and natural gas by removing the specified limits on the hydrogen sulfide content of the fuel and replacing them with limits on total sulfur content.

EPA also proposed revisions to sections 2.3.1.4 and 2.3.2.4 of appendix D, which would change the way of documenting that a fuel qualifies as pipeline natural gas or natural gas. An initial compliance demonstration and periodic sampling of the total sulfur content of the fuel would be required. Initial compliance with the total sulfur limit would be documented either: (1) using a fuel purchase or pipeline transportation contract; or (2) using the results of all available fuel sampling results for the previous 12 months; or (3) using the results of a 720-hour demonstration; or (4) by obtaining and analyzing a sample of the fuel in the absence of a contract or historical fuel sampling data. Once a fuel initially qualified as pipeline natural gas or natural gas, periodic, on-going sampling for total sulfur content would be required. The proposed sampling frequency was semiannual and whenever ''it is reasonable to believe that the fuel composition has changed significantly.''

c. What Changes Is EPA Finalizing?

EPA received numerous comments on both the proposed method by which a fuel qualifies as pipeline natural gas or natural gas and the proposed semiannual total sulfur sampling requirement. In view of the comments, EPA has modified these rule provisions. In today's rule, revised sections 2.3.1.4 and 2.3.2.4 of appendix D specify three methods by which a fuel may initially qualify as pipeline natural gas or natural gas: (1) by a fuel contract or tariff sheet with a maximum total sulfur specification that meets the definition of pipeline natural gas or natural gas; (2) based on historical fuel sampling and analysis data from the previous twelve months; or (3) in the absence of a satisfactory contract specification or historical sampling data, by obtaining a sample (or samples) of the fuel. For a

fuel that qualifies using a contract or tariff sheet specification, no additional on-going sampling of the total sulfur content is required, provided that the contract or tariff sheet is current, valid, and representative of the fuel combusted in the unit. For a fuel that initially qualifies as pipeline natural gas or natural gas based on fuel sampling and analysis, total sulfur sampling is required annually and whenever the fuel supply changes. The annual total sulfur sampling requirement has an effective date of January 1, 2003.

Discussion

One commenter supported the proposed provision to allow a fuel to initially qualify as pipeline natural gas or natural gas based on a single fuel sample, and also supported the proposed semiannual total sulfur sampling requirement (Reliant). Another commenter expressed concern that for sources using the historical fuel sampling option, the language requiring that ''all available fuel samples'' from the past twelve months be used could require an exhaustive search of all possible sources of sample results and might lead to allegations that a source had excluded relevant samples (UARG). The commenter suggested that EPA should consider using alternate language, such as ''representative fuel samples from the past twelve months'', and that the Agency should also allow averaging of sample results. The commenter also stated that if a source has followed EPA's June 12, 2000 guidance and has obtained the total sulfur sample(s) to document that the fuel being combusted qualifies as pipeline natural gas or natural gas, re-qualification is unnecessary and the source should only be subject to the on-going semiannual fuel sampling requirements.

Three commenters objected to the proposed requirement to sample the total sulfur content of pipeline natural gas and natural gas semiannually (UARG, Class of '85, XCEL Energy). One of these commenters suggested that annual, rather than semiannual, sampling would be more appropriate, and that for sources relying on a contract specification, the on-going sampling should not be required at all (UARG). The other two commenters recommended deleting the semiannual sampling requirement and requiring re-sampling only if the fuel supply changes (Class of '85, XCEL Energy). Several commenters stated that EPA should allow immediate re-sampling to be performed if the results of a periodic sulfur sample analysis are believed to be anomalous or suspect (Class of '85, XCEL Energy, Machaver).

After considering these comments, EPA has revised both the requirements for a fuel to initially qualify as pipeline natural gas or natural gas, and the on-going total sulfur sampling requirements. In today's rule, revised sections 2.3.1.4 and 2.3.2.4 of appendix D provide three methods by which a fuel may qualify: (1) By a total sulfur specification in a fuel contract or tariff sheet; (2) based on historical fuel sampling data from the previous twelve months; or (3) in the absence of a contract specification or historical sampling data, a sample of the fuel's total sulfur content must be obtained and analyzed. Note that EPA has removed the fourth option of performing the 720-hour demonstration described in section 2.3.6 of appendix D to qualify, believing it to be unnecessary in light of the third option allowing use of a sample. The 720-hour demonstration has been reserved for characterizing the sulfur content of gaseous fuels other than pipeline natural gas and natural gas.

Today's rule states that when the owner or operator relies on the specifications in a fuel contract or tariff sheet for a fuel to initially qualify as pipeline natural gas or natural gas, no initial or on-going sampling of the total sulfur content is required, provided that the contract or tariff sheet is current, valid, and representative of the fuel combusted in the unit. For a fuel that initially qualifies as pipeline natural gas or natural gas based on fuel sampling and analysis, total sulfur sampling is required annually and whenever the fuel supply changes. The annual total sulfur sampling requirement has an effective date of January 1, 2003.

EPA believes that most sources are likely to use fuel sampling to demonstrate that the fuel qualifies as pipeline natural gas or natural gas, rather than relying on contract specifications. This is because the maximum total sulfur content specified in most contracts for transmitting pipeline natural gas, and under most tariffs established with the Federal Energy Regulatory Commission, is 20.0 gr per 100 scf, whereas the actual total sulfur content of natural gas is generally 10 to 100 times lower. In the absence of actual fuel sampling data, Table D–5 in appendix D requires the maximum total sulfur content specified in the contract or tariff to be used to calculate the default SO_2 emission rate. Therefore, EPA believes that most sources combusting natural gas will elect to perform fuel sampling, rather than using the specifications in a fuel contract or tariff sheet, in order to avoid significantly overestimating SO_2 emissions.

The final rule further states that when historical fuel sampling results are used to qualify, only those fuel samples taken by or provided to the owner or operator in the past twelve months need be considered. If multiple fuel samples are used to qualify, each sample must meet the applicable total sulfur limit. Also, if a single fuel supply serves many affected units, it is not necessary to obtain a separate sample for each unit, provided that no other gaseous fuel is mixed with the fuel in transporting it from the sampling location to the affected units. For fuels that qualify as natural gas, if multiple samples are taken, the results may be averaged before using Equation D–1h to calculate the default emission rate.

If the results of any required fuel sampling and analysis fail to demonstrate that a fuel qualifies as pipeline natural gas or natural gas, but the results are suspect or believed to be anomalous, the owner or operator may document the reasons for believing this in the monitoring plan and additional sampling may be initiated immediately. In such cases, at least three additional samples are required and each sample analysis must meet the applicable total sulfur limit for pipeline natural gas or natural gas.

Finally, EPA notes that affected facilities currently relying on total sulfur samples obtained in accordance with the June 12, 2000 guidance to meet the definition of pipeline natural gas or natural gas are not required to perform any additional sampling to re-qualify, provided that the fuel supply source has not changed since the samples were taken. These facilities are subject only to the on-going, annual total sulfur sampling requirement which takes effect in 2003.

3. How Does Today's Rule Change the Fuel Sampling and Data Reporting Requirements for Gaseous Fuels Other Than Pipeline Natural Gas and Natural Gas?

Background

a. What Is Currently Required?

Appendix D of part 75 may be used for ''other'' gaseous fuels besides pipeline natural gas and natural gas. For these other gaseous fuels, appendix D does not allow SO_2 emissions to be quantified using a default SO_2 emission rate. Rather, hourly sampling of the total sulfur content of the fuel is required using manual sampling methods or an on-line gas chromatograph, although section 2.3.6 in appendix D provides a

720-hour demonstration procedure whereby some relief from hourly sulfur sampling can be obtained. The demonstration requires 720 hours of sampling to characterize the fuel's total sulfur content and variability. If the results of the demonstration show that the fuel has a low sulfur variability, then the owner or operator may sample the fuel's sulfur content daily instead of hourly.

b. What Changes Were Proposed?

In the June 13, 2001 proposed rule, EPA proposed clarifying that the 720-hour demonstration procedure in section 2.3.6 of appendix D is optional and that it may be used to show that the sulfur content of a particular gaseous fuel is within the limits for pipeline natural gas or natural gas. However, the Agency received a significant comment on section 2.3.6, requesting that EPA allow the demonstration procedure to be used to determine default SO_2 emission factors for gaseous fuels such as refinery gas and producer gas, so that units burning these fuels would be able to obtain relief from the hourly or daily sulfur sampling requirements.

c. What Changes Is EPA Finalizing?

EPA believes that the commenter's suggestion has merit, and has incorporated it into the final rule. Today's rule conditionally allows the owner or operator of an Acid Rain Program unit that combusts a gaseous fuel other than pipeline natural gas or natural gas to determine a fuel-specific default SO_2 emission rate using the results of the 720-hour demonstration in section 2.3.6 of appendix D. The default emission rate could be used in conjunction with the hourly heat input rate to quantify hourly SO_2 emissions in the same manner as is done for pipeline natural gas or natural gas. The only exception to this would be if the results of the 720-hour demonstration indicate that the gaseous fuel has both a high sulfur content and high sulfur variability (i.e., greater than 5.0 grains per 100 scf, standard deviation). In that case, the more rigorous hourly sulfur sampling would be required.

Discussion

EPA received one comment on the proposed changes to section 2.3.6 of appendix D (UARG). The commenter requested that EPA add language to section 2.3.6 stating that for ''other'' low-sulfur gaseous fuels (such as producer gas, refinery gas, and landfill gas), the results of the 720-hour demonstration in section 2.3.6 may be used to determine a fuel-specific default SO_2 emission rate such as is determined for natural gas by using Equation D–1h. The principal reason for this recommended rule revision would be to provide regulatory relief from the current appendix D requirement to perform either hourly or daily sulfur sampling for these ''other'' gaseous fuels.

EPA finds the commenter's request to be reasonable and believes that the 720-hour demonstration is sufficiently representative to support the desired regulatory relief with little risk of underestimating SO_2 emissions. Therefore, today's rule adds the requested language to section 2.3.6 of appendix D. In the final rule, revised section 2.3.6 conditionally allows ''other'' gaseous fuels (e.g., refinery gas or producer gas) to use default SO_2 emission rates to quantify SO_2 mass emissions rather than performing daily or hourly sampling for total sulfur. If the 720-hour demonstration described in section 2.3.6 is performed for the gaseous fuel, the results of that demonstration may be used to determine a default SO_2 emission rate, provided that the fuel is not found to have both a high sulfur content (more than 20 grains per 100 scf) and a high sulfur variability (more than 5 grains per 100 scf, standard deviation). If the fuel qualifies to use a default SO_2 emission rate, then Equation D–1h in appendix D may be used to calculate the emission rate in the same manner that a default emission rate would be calculated for natural gas. The exact value of the fuel's total sulfur content used to calculate the default emission rate depends on whether the fuel is found to have a low or high sulfur variability (i.e., variability with a standard deviation of greater than 5.0 grains per 100 scf) during the 720-hour demonstration. If the sulfur variability is low, the 90th percentile value from the demonstration is used in the calculation. If the sulfur variability is high, the maximum value from the demonstration is used to calculate the default SO_2 emission rate.

Today's rule requires periodic on-going total sulfur sampling for other gaseous fuels that use the demonstration in section 2.3.6 to determine a default SO2 emission rate. The required sampling frequency is annual. For reporting purposes, the default emission rate derived from the 720-hour demonstration is used unless a higher sulfur content is obtained in an annual sample, in which case the higher sampled value would be reported.

The Agency notes that the 720-hour demonstration in section 2.3.6 may also be used to derive fuel-specific default SO_2 emission rates for Acid Rain Program units seeking to qualify as low mass emissions units under § 75.19 (see Docket A–2000–33, Item V–C–1 for further discussion).

4. What Changes to the Appendix D Missing Data Procedures Are Finalized?

Background

a. What Is Currently Required?

Appendix D requires the owner or operator to report substitute data for any hour in which quality-assured fuel flow rate data is not obtained and whenever a sample of the fuel sulfur content, gross calorific value, or density has not been obtained and analyzed as required. The load-based missing data procedures for fuel flow rate are found in section 2.4 of appendix D. The appropriate substitute data values for fuel sulfur content, gross calorific value, and density are given in Table D–6.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed revising the appendix D missing data procedures. The load-based fuel flow rate missing data procedures in section 2.4.2 would be clarified but not substantively changed. New fuel flow rate missing data procedures would be added for units that do not produce electrical output or steam load. The missing data requirements for the sulfur content of gaseous fuels in Table D–6 would also be changed, as follows: (1) Substitute data values for pipeline natural gas and natural gas would be expressed in terms of the total sulfur content of the gas instead of the hydrogen sulfide content; (2) for pipeline natural gas, the substitute data value would be 0.002 lb/mmBtu; (3) for natural gas, the substitute data value would be an emission rate (in lb/mmBtu) calculated from Equation D–1h using the lesser of the maximum total sulfur content specified in the fuel contract or 1.5 times the highest total sulfur value from the previous year's samples; (4) for gaseous fuels sampled daily, the substitute data value would be 1.5 times the highest total sulfur content obtained in the previous 30 daily samples; and (5) for gaseous fuels sampled hourly, the substitute data value would be the highest total sulfur content from the previous 720 hourly samples.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the revisions to the appendix D missing data procedures. The final rule provisions have been modified somewhat from the proposal to be consistent with changes that have been made to other sections of appendix D based on comments received. The fuel flow rate missing data

procedures for non-load-based units have also been simplified to make them easier to implement. EPA has provided additional time in the rule language from the effective date of today's rule for owners and operators to implement these new missing data routines (see Section V., Rule Implementation, of this preamble).

Discussion

EPA received comments on the proposed revisions to the appendix D missing data routines from only one commenter (UARG). The commenter was generally supportive of the proposed changes to the gas sulfur content substitute data values in Table D–6 and to the missing data routines for fuel flow rate. However, the commenter expressed concern that the changes would require significant reprogramming of the data acquisition and handling system (DAHS) software and requested that EPA allow sufficient time to implement the new missing data routines.

In view of the supportive comments received, the proposed revisions are finalized with only minor changes. These changes to the proposal are deemed necessary for purposes of consistency. Other sections of appendix D have been modified based on comments received, and some of the changes to those sections impact the missing data routines. The most significant change was made to the substitute data value for natural gas combustion. The proposed rule would have required the substitute data value to be the lesser of: (a) the maximum sulfur content specified in the fuel contract; or (b) 1.5 times the highest sulfur content from the previous year's samples. The final rule requires the substitute data value to be 1.5 times the default value of sulfur content which is in effect at the time of the missing data period. According to revised Table D–5, the default value ''in effect'' will be either the maximum sulfur content specified in the fuel contract or the sulfur content from the most recent sample. Since the required sampling frequency for natural gas is annual, only one sample is required each year. Thus, there is little difference in meaning between the proposed rule language, *i.e.,* ''highest sulfur content from the previous year's samples'' and the final rule language, *i.e.,* ''sulfur content from the most recent sample.''

Today's rule finalizes the proposed fuel flow rate missing data routines both for load-based units and for units that do not produce electrical or steam load. The load-based provisions are finalized as proposed; however, for ease of implementation the proposed non-load-based routines have been simplified. In the final rule, the substitute data value for non-load-based units is simply the arithmetic average of the quality-assured flow rates in a 720-hour lookback period. EPA is not finalizing the proposed option that would have allowed the data to be sorted into operating bins, nor the associated text in section 4 of appendix C. The Agency believes that separating fuel flow data into operating bins unnecessarily complicates the missing data routines. EPA expects that not finalizing this proposed missing data option will have little or no impact since, at present, there are no non-load-based oil and gas-fired units required to use part 75 monitoring. However, it is possible that such units may be included in a future program such as the Federal NO_X Budget Trading Program. Should the owners or operators of such units elect to use appendix D and decide that operational bins are needed for fuel flow rate missing data purposes, EPA will consider allowing that missing data approach through the petition process under § 75.66.

E. Other Highlights and Changes

1. What Changes to the Compliance Dates and Timelines for Monitor Certification in § 75.4 Are Finalized in Today's Rule?

Background

a. What Is Currently Required?

Part 75 specifies different monitor certification timelines in § 75.4 for new units, new stacks, and deferred units. New units must certify their monitors within 90 calendar days after the unit commences commercial operation. Similarly, for newly affected units, owners or operators have 90 calendar days from the date on which they become Acid Rain-affected units to certify monitors. Also, when a new stack or flue gas desulfurization system (FGD) is constructed, the owner or operator has 90 calendar days from the date on which emissions first exit to the atmosphere through the new stack or FGD to install and certify continuous monitoring systems. However, for deferred units (affected units that were in cold-storage on their compliance deadline), owners or operators have either 45 operating days or 180 calendar days (whichever occurs first) to certify monitors after recommencing operation. The 90 calendar day timeline has proven to be problematic, particularly for new units that experience mechanical problems when they first begin operating. The deferred unit timeline provides greater flexibility.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to harmonize all of the timelines for deferred units, new units, new stacks, and newly affected units. In all cases, the certification deadline would be the earlier of 90 unit operating days or 180 calendar days after the unit commences commercial operation or recommences operation. Paragraphs (b), (c), (d), and (e) of § 75.4 would be revised to incorporate this change. Corresponding changes would be made to 40 CFR 97.70, the monitoring and reporting sections of the January 18, 2000, section 126 final rule in order to make the certification timelines in parts 75 and 97 consistent.

c. What Changes Is EPA Finalizing?

Today's rule finalizes the proposed changes to the certification timelines in parts 75 with one exception. For newly-affected Acid Rain Program units under § 75.4(c), the certification timeline would begin with the first hour of operation of the unit after the date on which it becomes an Acid Rain-affected unit, rather than the first hour after the unit becomes Acid Rain-affected.

Discussion

EPA received numerous comments on the proposed changes to the certification timelines in § 75.4 (Reliant, Clean Energy Group, Dominion, UARG, Class of '85, Dynegy). All of the commenters were supportive of the proposed revisions. However, one commenter requested that § 75.4(c) be revised further (Dominion). The commenter recommended that the timeline for newly-affected Acid Rain Program units be modified so that the ''clock'' starts with the first hour of commercial operation of the unit after it becomes affected, rather than starting from the date and hour on which the unit becomes affected. The commenter indicated that this would provide the utility with the option of not operating a newly-acquired unit, thereby allowing time to acquire the necessary CEMS equipment. EPA agrees that this added flexibility in the certification timeline for newly-affected units is desirable and incorporates the commenter's suggestion into the final rule.

2. Does Today's Rule Change the Way in Which Unit and Stack Operating Hours Are Counted?

Background

a. What Is Currently Required?

Part 75 allows quality-assurance (QA) test exemptions and deadline extensions for continuous emission monitors based on the amount of unit operation. Grace periods are also allowed to complete missed QA tests. To qualify for QA test extensions and exemptions, an owner or operator must determine whether there are at least 168 unit or stack operating hours in the quarter (so that the quarter meets the definition of a ''QA operating quarter''). The length of grace periods is also determined on a unit or stack operating hour basis. The rule defines ''unit operating hour'' and ''stack operating hour'' in such a way that partial operating hours are counted as full hours. This is not the way that source operators normally count operating hours. They normally count cumulative operating time so that 30 minutes of operation equals 0.5 operating hours, not 1.0 hours.

b. What Changes Were Proposed?

On June 13, 2001, EPA proposed to add two new definitions, ''cumulative stack operating hours'' and ''cumulative unit operating hours'', to § 72.2. The definitions of ''QA operating quarter'' and ''fuel flowmeter QA operating quarter'' would be revised to put them in terms of cumulative unit or stack operating hours. Finally, all references to the length of grace periods would be changed to be in terms of cumulative unit operating hours or cumulative stack operating hours. These proposed changes would effectively remove the requirement to count partial operating hours as full hours when determining the source operating time and the length of the grace period.

c. What Changes Is EPA Finalizing?

EPA is finalizing neither of the proposed definitions of ''cumulative stack operating hours'' and ''cumulative unit operating hours'' nor the proposed changes to the way in which unit and stack operating hours are counted.

Discussion

EPA received input from four commenters on the proposed changes to the method of counting unit and stack operating hours (Class of '85, Dynegy, UARG, XCEL Energy). None of the commenters supported the changes without reservation. All of them indicated that EPA should make the changes optional, not mandatory. All of the commenters stated that the changes would require significant, potentially costly changes to the DAHS software. The commenters also noted that for many utilities, the increase in rule flexibility associated with the changes would not be great enough to justify the expense.

In the absence of fully supportive comments, EPA has decided not to adopt the proposed revisions. The Agency considered incorporating the commenters' suggestion to allow two options for calculating source operating time, i.e., one based on unit operating hours and one based on ''cumulative'' unit operating hours. However, EPA rejected this approach because it would seriously complicate program oversight. It also would require significant re-programming of EPA's data checking software and would require structural changes to several EDR record types. In this case, the Agency concludes that the relatively small benefit of allowing a second method of calculating source operating time does not justify the associated cost.

3. Does Today's Rule Change the Notification Requirements for Monitor Certifications and Recertifications?

Backround

For the initial certification of continuous monitoring systems, part 75 requires the owner or operator to provide a minimum of 45 days advance notice before the first date of scheduled testing. For recertifications, at least 45 days of advance notice is required when all recertification tests are required (full recertification), but only 7 days notice is required when all of the tests are not required (partial recertification).

On June 13, 2001, EPA proposed revising §§ 75.20 and 75.61, to make a single notification requirement of 21 days for initial certifications and for all recertifications, regardless of whether all of the tests are required. EPA believed the existing 7-day notice for partial recertifications provided too little time for State and local agency personnel and EPA personnel to schedule site visits to observe the recertification testing. Conversely, the Agency believed that 45 days notice was too far in advance of the testing. Test observation is a critical component of agency oversight of the Acid Rain Program monitoring requirements, and the 21-day test notification requirement would ensure that the agencies can successfully fulfill this responsibility.

Based on comments received, EPA is finalizing the 21-day certification test notification requirement as proposed, but has modified the proposed recertification test notification provisions. Today's rule makes a clearer distinction between full and partial recertifications and the notification requirements for each type. The final rule reduces the notification requirement for full recertifications from 45 to 21 days as proposed, but retains the 7-day advance notice requirement for partial recertifications. An emergency provision for unplanned full recertifications has also been added to § 75.61(a)(1)(i).

Discussion

EPA received comments from five commenters on the proposed changes to the certification and recertification test notification requirements (Dominion, Dynegy, UARG, Class of '85, ESC). The commenters did not object to reducing the test notification time for initial certifications from 45 to 21 days. However, four of the commenters objected to the proposal to require 21 days advance notice for recertifications (Dominion, Dynegy, UARG, ESC), and the fifth commenter objected to the 7-day notification requirement when the scheduled RATA is performed on a different date (Class of '85). The commenters perceive the 21-day notification requirement for recertifications as being an increase from the 7-day requirement of the current rule. For reasons discussed in greater detail in the ''Response to Comments'' document supporting this rulemaking (see Docket No. A–2000–33, Item V–C–1), this perception is not entirely correct. The proposed 21-day notification requirement represents an increase in notification time only for partial recertifications (where a full battery of tests is not required). For full recertifications, where all of the tests are required, 21 days notice actually is a reduction from the 45-day notification requirement of the current rule.

The commenters' main objection to the 21-day notification requirement for recertifications centers around emergency (unplanned) events that require recertification. The commenters expressed concern that requiring such a long advance notice would require sources in emergency situations to postpone testing in order to give observers the opportunity to schedule site visits. The commenters stated that this could result in sources having to use the missing data routines for long periods of time which is inconsistent with the part 75 goal of keeping monitors operating and reducing missing data episodes.

After consideration of these comments, EPA is finalizing the 21-day test notification requirement for initial certifications and for full

recertifications. The text of § 75.61(a)(1)(i) is revised to be consistent with § 75.20(b)(2) and to make it clear that the 21-day requirement applies to full recertifications as well as initial certifications. A typographical error in § 75.20(b) is also corrected. The proposed 21-day notification for partial recertifications is not adopted, and the 7-day requirement, with the associated emergency provision, is retained.

To address the commenters' concern about emergency recertifications, § 75.61(a)(1)(i) of today's rule provides an emergency provision for unplanned events beyond the source operator's control which require a full battery of recertification tests to be performed. The emergency provision is the same as the one in § 75.61(a)(1)(ii) for partial recertifications.

4. Does Today's Rule Affect the Way in Which Emissions Are Monitored and Reported for Units With Bypass Stacks?

Background

For an exhaust configuration consisting of a main stack and a bypass stack, if the use of the bypass stack is limited by regulation or permit to emergency malfunctions of the flue gas desulfurization system, § 75.16 allows the maximum potential SO_2 concentration to be reported during the malfunction in lieu of installing monitors on the bypass stack. For NO_X, however, the rule has no corresponding provision. Rather, it appears that monitoring of the bypass stack or monitoring of the duct(s) leading to the bypass stack are the only available options.

On June 13, 2001, EPA proposed clarified and expanded instructions for SO_2 and NO_X monitoring of multiple and bypass stack configurations in §§ 75.16(c) and 75.17(c), and in § 75.72(c) and (d). EPA proposed a new provision to §§ 75.17(c) and 75.72(c) for configurations consisting of a main stack and a bypass stack, allowing the maximum potential NO_X emission rate to be reported when the bypass stack is used.

EPA also proposed revisions to the language in § 75.16(c)(3) which restricts the reporting of the maximum potential SO_2 concentration (MPC) to emergency situations in which the flue gas desulfurization (FGD) system is bypassed. Proposed § 75.16(c)(3) would allow the MPC to be reported in lieu of monitoring at the bypass stack, provided that the use of the bypass stack is limited to unit startups, emergency situations, and routine maintenance of the FGD system and the main stack.

Today's rule finalizes the proposed bypass stack monitoring and reporting revisions with minor editorial changes.

Discussion

Two commenters supported the proposed revisions to the bypass stack monitoring provisions (UARG, Reliant). However, one of the commenters objected to the proposed language in §§ 75.16(c) and 75.17(c) addressing the reporting of parameters other than SO_2 or NO_X during bypass hours, stating that the proposed language ''creates confusion and conflict'' (UARG).

After consideration of these comments, EPA is finalizing the bypass stack monitoring provisions as proposed, except that the references in §§ 75.16(c) and 75.17(c) to the reporting of other parameters, such as CO_2, are not adopted because EPA believes that these requirements are adequately addressed in other sections of the rule and do not need to be re-stated here.

5. What Other Noteworthy Provisions Are Finalized in Today's Rule?

EPA notes that no negative comment was received on the following significant revisions to part 75 that are finalized for the reasons stated in the proposed rule:

- The proposal to remove the restriction in section 2.1.2 of appendix D prohibiting apportionment of measured hourly heat input at a common pipe to the individual units (for units using the provisions of subpart H of part 75 to monitor NO_X mass emissions) is finalized. Common pipe heat input apportionment is now allowed for subpart H units, provided that the units served by the pipe are all affected units with similar efficiencies (e.g., all boilers or all turbines).
- The proposed revisions to the appendix E missing data procedures are finalized.
- The proposed revisions to appendix E, section 2.2, requiring retesting once every 5 years (20 calendar quarters) and removing the requirement to retest every 3,000 operating hours are finalized.
- The proposal to expand the use of Equation G–4 in appendix G to oil-fired units is finalized.

F. Streamlining Changes

Background

A number of rule sections in part 75 have expired either on December 31, 1999, or on March 31, 2000. For some, but not all, of these expired rule provisions, part 75 contains new (replacement) provisions, having effective dates of January 1, 2000, or April 1, 2000, respectively. The expired provisions are a potential source of confusion to both the regulated community and to regulators in assessing compliance with part 75. For instance, the rule contains two sets of recordkeeping and reporting provisions, one of which expired on March 31, 2000, and the other which became effective on April 1, 2000. Removing the expired sections would greatly facilitate part 75 implementation and compliance.

On June 13, 2001, EPA proposed streamlining part 75 by eliminating outdated language in the rule and by removing a number of references throughout part 75 to sections of the rule that are no longer effective. This streamlining would occur in several places in the rule. The Agency proposed to remove from part 75 all of the rule sections that expired on April 1, 2000, and all textual references to those sections. This includes the recordkeeping and reporting sections, §§ 75.54, 75.55, and 75.56; the monitoring plan provisions in § 75.53(c) and (d); and the CO_2 missing data provisions in § 75.35(c).

EPA also proposed removing rule sections that only applied to Phase I Acid Rain Program units and are now inapplicable, and to remove all textual references to those sections. For instance, the 15 percent relative accuracy specification for flow monitors expired at the end of Phase I (on December 31, 1999) and was replaced on January 1, 2000, by the current 10 percent standard. The proposed rule would revise appendix A, section 3.3.4; appendix B, sections 2.3.1.2(b) and (c); and Figure 2 of appendix B to reflect this.

Today's rule finalizes the streamlining changes as proposed. EPA has prepared a technical support document (see Docket No. A–2000–33, Item IV–A–9) that identifies in tabular form all of the streamlining changes made to part 75.

Discussion

EPA received comments from only one commenter on the proposed streamlining changes to part 75 (UARG). The commenter agreed that the cited rule provisions are obsolete and did not object to their removal. Therefore, EPA finalizes the changes as proposed.

V. Rule Implementation

This final rule becomes effective July 12, 2002. However, EPA is aware that while some affected sources may choose to take advantage of options provided immediately, others will require more time for implementation. Therefore, EPA has specified in this final rule where additional time is permitted for

full compliance with new mandatory requirements.

The rule provisions that provide alternative compliance dates are as follows: Appendix A paragraph 2.1.2.1(a); Appendix D Table D–6 under Gas Total Sulfur Content; and Appendix E paragraph 2.5.2.

EPA is aware that some non-load based units are required under their State's SIP to start monitoring NO_X mass emissions according to part 75 in the 2002 ozone season. EPA will continue to work with the affected sources and the State to resolve any conflicts imposed on the sources by the timing of today's rule.

Some aspects of the final rule that will require attention concern reporting requirements and mechanisms. While EPA is prepared to accept electronic data reports in the proscribed format, regulated sources will require time to review the final rule and make any adjustments or changes in software that may result. With this in mind, EPA is updating the EDR version 2.1 Instructions to accompany this final rule. EPA has identified in the rule language any deadlines for compliance that are different from the effective date of this rule, as applicable. If you have questions regarding the implementation of this final rule, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

VI. Regulatory Assessment Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule is not expected to have an annual effect on the economy of $100 million or more. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and it is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule is not expected to result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year and, as such, is not subject to sections 202 and 205 of the UMRA. As discussed in section III., above, EPA will continue to use its outreach efforts related to part 75 implementation, including guidance documents and a policy manual that is updated regularly, to inform, educate, and advise all potentially impacted governments about compliance with part 75.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and has assigned OMB control numbers 2060–0258 and 2060–0445.

The information collection requirements in 40 CFR parts 72 and 75 affect two EPA programs, the Acid Rain Program and the Federal NO_X Budget Trading Program. There are two program ICRs currently in place that account for the basic recordkeeping and reporting burdens associated with 40 CFR parts 72 and 75. First, the Acid Rain Program ICR (ICR 1633.12, OMB No. 2060–0258) addresses the costs for units affected by the Acid Rain Program. The NO_X SIP Call ICR (ICR 1857.02, OMB No. 2060–0445) addresses the costs, including NO_X mass monitoring costs, by both Acid Rain Program (ARP) units and non-ARP units in the NO_X Budget Trading Program.

Most of the changes associated with this rulemaking provide additional flexibilities to existing regulations in response to issues raised during the ongoing implementation of part 75. Thus, they do not significantly affect the burden estimates included in the two existing ICRs. Table 1, below, categorizes the changes finalized in parts 72 and 75, as recordkeeping and reporting burden/cost neutral or as burden/cost reducing; none of the changes is expected to significantly increase burdens or costs. (The remaining changes do not affect recordkeeping and reporting requirements.)

Further, the Agency expects the changes to have minimal impact on existing program ICRs because many of the changes merely serve to make additional flexibilities feasible. For example, many of the rule revisions to the LME section clarify how the rule applies to non-ARP SIP Call units that use part 75 for NO_X mass monitoring. The changes make use of the LME provisions feasible for non-ARP units so that the scope of applicability to non-ARP units is not expected to be significantly different from that for ARP units.

The SIP Call ICR assumed none of the non-ARP units would take advantage of the reduced burdens and costs associated with the LME provisions

because those estimates only related to burden incurred through the year 2002. In future years, as LMEs avail themselves of the proposed provisions, it is estimated that there will be burden reductions. These reductions will be reflected in the next revisions to the SIP Call ICR.

TABLE 1.—SUMMARY OF IMPACTS OF MAJOR RULE REVISIONS

A. Rule Revisions Assumed to Be Cost/Burden Neutral

- Pipeline natural gas definition revision, and other definition clarifications
- Standardization of deadlines for various activities/reports/notices
- Data validation clarifications
- Span/range clarifications
- Bypass monitoring flexibility changes
- Clarifications for Subpart H missing data
- General LME clarifications
- Missing data options relating to fuel type, degree of control, and non-load based units
- Alternative bypass stack monitoring options
- Other miscellaneous changes

B. Rule Revisions Assumed to Decrease Costs/Burdens

- Expanded clarification and applicability of LME for Subpart H monitoring

Although not indicated in Table 1, there are two primary ways in which the parts 72 and 75 revisions could result in some increased burden or cost. First, the regulated industry and State and local agencies involved with part 75 monitoring will have to review the revised regulation to understand the changes. The existing ARP and SIP Call ICRs have accounted for this increase in a line item for ongoing rule review. Nevertheless, it is important to note that new units just initiating part 75 monitoring in response to the NO_X SIP Call will experience less burden as a consequence of the numerous clarifications, the specific changes to address NO_X mass monitoring issues, and the removal of outdated sections. Taken as a whole, EPA does not believe that the regulatory review burdens will be significant.

The second type of burden or cost increase would be associated with any required DAHS software changes that may be necessary to the extent the rule revisions affect recording and reporting data in the required electronic data formats. Generally, EPA has attempted to minimize any DAHS impacts associated with these revisions. There are some optional elements of the rule revisions that could require DAHS software changes, but only if the owner or operator decides to take advantage of the option for its circumstances. EPA believes many sources will only avail themselves of these types of changes as part of other routine monitoring system component upgrades. As noted in Section V., Rule Implementation, of this preamble, sources regulated under part 75 will have additional time to comply with certain provisions. Consequently, the expected impact associated with DAHS changes is also expected to be minimal.

In the proposed rule, the Agency specifically requested comment on its assessment of information burden imposed by these requirements and received no comments on the subject. 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 purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. 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.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. Today's final action adds flexibility to the existing procedures for monitoring and reporting and makes other streamlining improvements and clarifications to the existing regulations. The EPA has therefore concluded that today's final rule will have no adverse impacts on small entities and may relieve burden in some cases.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 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 rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (''PBMS''), part 75 sets forth criteria that allow the use of alternative methods to the ones identified in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality.

EPA specifically requested public comment on any other voluntary consensus standards which may be appropriate for the part 75 rule revisions and no such comments were received. The EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under § 75.66(c) before they may be used under part 75.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''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 rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not create a mandate upon State, local, or tribal governments, except to the extent such governments own or operate an affected source. Even in those cases, the proposed rule revisions do not have federalism implications and do not impose significant compliance costs beyond the costs already incurred under part 75. Thus, Executive Order 13132 does not apply to this rule.

As discussed above in Section III. and in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically worked with and solicited comment on the proposed rule from State and local officials.

H. 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'' 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 final rule 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 Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Moreover, as discussed above in Section III. and in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule will take affect July 12, 2002.

List of Subjects

40 CFR Part 72

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Continuous emission monitoring, Electric utilities, Nitrogen oxides, NO_X Budget Trading Program, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring (CEM), Electric generating units (EGUs), Electric utilities, Nitrogen oxides, Non-electric generating units (Non-EGUs), Non-load based units, NO_X Budget Trading Program, Reporting and recordkeeping requirements, Subpart H, Sulfur oxides.

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 72—PERMITS REGULATION

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by:

a. Revising the definitions of ''Cogeneration unit'', ''Continuous emission monitoring system or CEMS'', ''Low mass emissions unit'', ''Missing data period'', ''Pipeline natural gas'', ''Stack operating hour'', and ''Unit operating hour'';

b. In the definition of ''Automated data acquisition and handling system'' by adding the words ''moisture monitors,'' before the word ''opacity'';

c. In the definition of ''By-pass stack'' by removing the hyphen from the word ''Bypass'';

d. In paragraph (1) of the definition of ''Calibration error'' by adding the word ''a'' before the words ''gaseous monitor'';

e. In the definition of ''Compliance plan'' by adding a closing parenthesis after the second instance of the words ''part 76 of this chapter'';

f. In the definition of ''Continuous opacity monitoring system or COMS'' by revising the words ''systems are component parts'' in the second sentence to read ''components are'', and in paragraph (2) by revising the word ''A'' to read ''An automated'';

g. Revising paragraph (2) of the definition of ''Emergency fuel'';

h. In the definition of ''Fuel flowmeter QA operating quarter'' by removing the words ''or more'' at the end of the definition;

i. Removing the definition of ''Heat input'' and adding in its place a new definition ''Heat input rate'';

j. Removing the definition of ''Hour before and after'' and adding in its place a new definition of ''Hour before and Hour after'';

k. Removing the definition of ''Maximum potential NO_X emission rate'' and adding in its place ''Maximum potential NO_X emission rate or MER'';

l. Removing the definition of ''Maximum rated hourly heat input'' and adding in its place the definition for ''Maximum rated hourly heat input rate'';

m. In the definition for ''monitor accuracy'' by removing the words ''or by one of its component parts'';

n. In the definition of ''Natural gas'' by revising the second sentence, and by removing the word ''meet'' and revising the ''%'' symbol to read ''percent'' in the third sentence;

o. In the definition of ''Peaking unit'' by adding a new paragraph (4);

p. In the definition of ''Relative accuracy'' by adding the words ''or moisture'' after the words ''between the pollutant'' and by adding the words ''or moisture monitor'' after the words ''flow monitor'';

q. Adding new definitions for ''Common pipe'', ''Common pipe operating time'', ''Diluent cap value'', ''Fuel flowmeter system'', ''Fuel usage time'', ''Multiple stack configuration'', ''Stack operating time'', and ''Unit operating time''.

The revisions and additions read as follows:

§ 72.2 Definitions.

* * * * *

Cogeneration unit means a unit that produces electric energy and useful thermal energy for industrial, commercial, or heating or cooling purposes, through the sequential use of the original fuel energy.

* * * * *

Common pipe means an oil or gas supply line through which the same type of fuel is distributed to two or more affected units.

Common pipe operating time means the portion of a clock hour during which fuel flows through a common pipe. The common pipe operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Continuous emission monitoring system or CEMS means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, or CO_2 emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18 and § 75.71(a) of this chapter indicate which type(s) of CEMS is required for specific applications:

(1) A sulfur dioxide monitoring system, consisting of an SO_2 pollutant concentration monitor and an automated DAHS. An SO_2 monitoring system provides a permanent, continuous record of SO_2 emissions in units of parts per million (ppm);

(2) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(3) A nitrogen oxides (NO_X) emission rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. A NO_X-diluent monitoring system provides a permanent, continuous record of: NO_X concentration in units of parts per million (ppm), diluent gas concentration in units of percent O_2 or CO_2 (% O_2 or CO_2), and NO_X emission rate in units of pounds per million British thermal units (lb/mmBtu);

(4) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated DAHS. A NO_X concentration monitoring system provides a permanent, continuous record of NO_X emissions in units of parts per million (ppm). This type of CEMS is used only in conjunction with a flow monitoring system to determine NO_X mass emissions (in lb/hr) under subpart H of part 75 of this chapter;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and the automated DAHS. A carbon dioxide monitoring system provides a permanent, continuous record of CO_2 emissions in units of percent CO_2 (% CO_2); and

(6) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H_2O (% H_2O)

* * * * *

Diluent cap value means a default value of percent CO_2 or O_2 which may be used to calculate the hourly NO_X emission rate, CO_2 mass emission rate, or heat input rate, when the measured hourly average percent CO_2 is below the default value or when the measured hourly average percent O_2 is above the default value. The diluent cap values for boilers are 5.0 percent CO_2 and 14.0 percent O_2. For combustion turbines, the diluent cap values are 1.0 percent CO_2 and 19.0 percent O_2.

* * * * *

Emergency fuel means either:

(1) * * *

(2) For purposes of the requirement for stack testing for an excepted

monitoring system under appendix E of part 75 of this chapter, the fuel identified in a federally-enforceable permit for a plant and identified by the designated representative in the unit's monitoring plan as the fuel which is combusted only during emergencies where the primary fuel is not available.

* * * * *

Fuel flowmeter system means an excepted monitoring system (as defined in this section) which provides a continuous record of the flow rate of fuel oil or gaseous fuel, in accordance with appendix D to part 75 of this chapter. A fuel flowmeter system consists of one or more fuel flowmeter components, all necessary auxiliary components (e.g., transmitters, transducers, etc.), and a data acquisition and handling system (DAHS).

* * * * *

Fuel usage time means the portion of a clock hour during which a unit combusts a particular type of fuel. The fuel usage time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Heat input rate means the product (expressed in mmBtu/hr) of the gross calorific value of the fuel (expressed in mmBtu/mass of fuel) and the fuel feed rate into the combustion device (expressed in mass of fuel/hr) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Hour before and *hour after* means, for purposes of the missing data substitution procedures of part 75 of this chapter, the quality-assured hourly SO_2 or CO_2 concentration, hourly flow rate, hourly NO_X concentration, hourly moisture, hourly O_2 concentration, or hourly NO_X emission rate (as applicable) recorded by a certified monitor during the unit or stack operating hour immediately before and the unit or stack operating hour immediately after a missing data period.

* * * * *

Low mass emissions unit means an affected unit that is ''gas-fired'' or ''oil-fired'' (as defined in this section), and that qualifies to use the low mass emissions excepted methodology in § 75.19 of this chapter.

* * * * *

Maximum potential NO_X emission rate or MER means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F to part 75 of this chapter, using the maximum potential nitrogen oxides concentration (MPC), as defined in section 2.1.2.1 of appendix A to part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2) under all operating conditions of the unit except for unit start-up, shutdown, and upsets. The diluent cap value, as defined in this section, may be used in lieu of the maximum O_2 or minimum CO_2 concentration to calculate the MER. As a second alternative, when the NO_X MPC is determined from emission test results or from historical CEM data, as described in section 2.1.2.1 of appendix A to part 75 of this chapter, quality-assured diluent gas (*i.e.*, O_2 or CO_2) data recorded concurrently with the MPC may be used to calculate the MER. For the purposes of §§ 75.4(f), 75.19(b)(3), and 75.33(c)(7) in part 75 of this chapter and section 2.5 in appendix E to part 75 of this chapter, the MER is specific to the type of fuel combusted in the unit.

Maximum rated hourly heat input rate means a unit-specific maximum hourly heat input rate (mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input rate or the highest observed hourly heat input rate.

Missing data period means the total number of consecutive hours during which any certified CEMS or approved alternative monitoring system is not providing quality-assured data, regardless of the reason.

* * * * *

Multiple stack configuration refers to an exhaust configuration in which the flue gases from a particular unit discharge to the atmosphere through two or more stacks. The term also refers to a unit for which emissions are monitored in two or more ducts leading to the exhaust stack, in lieu of monitoring at the stack.

* * * * *

Natural gas means * * * Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet.

* * *

* * * * *

Peaking unit means: * * *

(4) A unit required to comply with the provisions of subpart H of part 75 of this chapter, under a State or Federal NO_X mass emissions reduction program, may, pursuant to § 75.74(c)(11) in part 75 of this chapter, qualify as a peaking unit on an ozone season basis rather than an annual basis, if the owner or operator reports NO_X mass emissions and heat input data only during the ozone season.

* * * * *

Pipeline natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions, and which is provided by a supplier through a pipeline. Pipeline natural gas contains 0.5 grains or less of total sulfur per 100 standard cubic feet. Additionally, pipeline natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot.

* * * * *

Stack operating hour means a clock hour during which flue gases flow through a particular stack or duct (either for the entire hour or for part of the hour) while the associated unit(s) are combusting fuel.

Stack operating time means the portion of a clock hour during which flue gases flow through a particular stack or duct while the associated unit(s) are combusting fuel. The stack operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

Unit operating hour means a clock hour during which a unit combusts any fuel, either for part of the hour or for the entire hour.

* * * * *

Unit operating time means the portion of a clock hour during which a unit combusts any fuel. The unit operating time, in hours, is expressed as a decimal fraction, with valid values ranging from 0.00 to 1.00.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

3. The authority citation for Part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

§ 75.1 [Amended].

4. Section 75.1 is amended by adding the words ''[the Act]'' at the end of the first sentence of paragraph (a).

5. Section 75.4 is amended by:

a. In paragraphs (b)(2) and (c)(2) by revising the words ''Not later than 90'' to read ''The earlier of 90 unit operating days or 180 calendar'', and, in paragraph (c)(2), by revising the word ''becomes'' to read ''first operates after becoming'';

b. In the first sentence of paragraph (d) by revising the words ''the earlier of 45'' to read ''90'', adding the words ''(whichever occurs first)'' following the words ''180 calendar days'', and

removing the words ''of the affected unit'' after the words ''recommences commercial operation'';

c. Revising paragraphs (d)(1), (f) introductory text, (f)(1), (i)(2) and (i)(3);

d. In paragraph (e) introductory text, by revising the words ''90 calendar days'' to read ''90 unit operating days or 180 calendar days (whichever occurs first)'', by removing the word ''or'' in each instance that it occurs between ''flue, or flue gas'' or ''flue or flue gas'', by adding a comma between the words ''flue'' and ''flue gas'' in the second sentence, and by adding ''or add-on NO_X emission controls'' after each occurrence of ''desulfurization system'';

e. Removing and reserving paragraph (h);

f. In paragraph (i)(1), by removing the word ''or''; and

g. Adding paragraph (j).

The revisions and additions read as follows:

§ 75.4 Compliance dates.

* * * * *

(d) * * *

(1) The maximum potential concentration of SO_2 (as defined in section 2.1.1.1 of appendix A to this part), the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part;

* * * * *

(f) In accordance with § 75.20, the owner or operator of an affected gas-fired or oil-fired peaking unit, if planning to use appendix E of this part, shall ensure that the required certification tests for excepted monitoring systems under appendix E are completed for backup fuel, as defined in § 72.2 of this chapter, no later than 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit first combusts the backup fuel following the certification testing with the primary fuel. If the required testing is completed by this deadline, the appendix E correlation curve derived from the test results may be used for reporting data under this part beginning with the first date and hour that the backup fuel is combusted, provided that the fuel flowmeter for the backup fuel was certified as of that date and hour. If the required appendix E testing has not been successfully completed by the compliance date in this paragraph, then, until the testing is completed, the owner or operator shall report NO_X emission rate data for all unit operating hours that the backup fuel is combusted using either:

(1) The fuel-specific maximum potential NO_X emission rate, as defined in § 72.2 of this chapter; or

* * * * *

(h) [Reserved]

(i) * * *

(2) For a new affected unit which has not commenced commercial operation by January 2, 2000, 90 unit operating days or 180 calendar days (whichever occurs first) after the date the unit commences commercial operation; or

(3) For an existing unit that is shutdown and is not yet operating by April 1, 2000, 90 unit operating days or 180 calendar days (whichever occurs first) after the date that the unit recommences commercial operation.

(j) If the certification tests required under paragraph (b) or (c) of this section have not been completed by the applicable compliance date, the owner or operator shall determine and report SO_2 concentration, NO_X emission rate, CO_2 concentration, and flow rate data for all unit operating hours after the applicable compliance date in this paragraph until all required certification tests are successfully completed using either:

(1) The maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part;

(2) Reference methods under § 75.22(b); or

(3) Another procedure approved by the Administrator pursuant to a petition under § 75.66.

§ 75.6 [Amended]

6. Section 75.6 is amended in paragraphs (a)(17), (a)(18), (a)(19), (a)(26) and (a)(35) by removing the words ''§ 75.15 and''.

7. Section 75.10 is amended by:

a. In paragraph (a)(1) by revising the first occurrence of the word ''The'' in the first sentence to read ''To determine SO_2 emissions, the'', and by revising the words ''the automated'' to read ''an automated'';

b. In paragraph (a)(2) by revising the word ''The'' in the first sentence to read ''To determine NO_X emissions, the''; by adding the word ''-diluent'' after the first occurrence of the word ''NO_X'' in the first sentence; and by revising the words ''the automated'' to read ''an automated'';

c. In paragraph (a)(3)(i) by revising the words ''the automated'' to read ''an automated'';

d. In paragraph (a)(3)(iii) by revising the words ''using an O_2 concentration monitor in order'' to read ''that uses an O_2 concentration monitor,'' and by revising the words ''using the procedures in appendix F of this part with the automated'' to read ''(according to the procedures in appendix F of this part) with an automated'';

e. Removing ''and'' at the end of paragraph (a)(3)(iii) and removing the period at the end of paragraph (a)(4) and adding ''; and'' in its place;

f. Adding new paragraph (a)(5);

g. In paragraph (c) by adding the word ''Rate'' after the words ''Heat Input'' in the heading and by adding the words ''rate, in units of mmBtu/hr,'' after the words ''record the heat input'';

h. In paragraph (d)(1) by removing the words ''and component thereof'' from the first sentence, removing the words ''SO_2 emission rate in lb/mmBtu (if applicable),'' from the second sentence, and by adding the word ''or'' after the words ''of this part,'' in the fourth sentence;

i. In paragraph (d)(3) by revising the words ''flow monitor, or NO_X'' in the first sentence to read ''NO_X concentration monitor, flow monitor, moisture monitor, or NO_X-diluent'', by revising the words ''An hourly average NO_X or SO_2'' in the second sentence to read ''For a NO_X-diluent monitoring system, an hourly average NO_X'', by adding the word ''NO_X'' before the word ''pollutant'' and by removing the words ''(NO_X or SO_2)'' in the second sentence, and by revising in the fourth sentence the words ''Except for SO_2 emission rate data in lb/mmBtu, if'' to read ''If'';

j. In paragraph (f) by removing the words ''and component thereof''; and

k. Revising the heading of paragraph (g) from ''Minimum Recording and Recordkeeping Requirements'' to ''Minimum recording and recordkeeping requirements''.

The revisions and additions read as follows:

§ 75.10 General operating requirements.

(a) * * *

(5) A single certified flow monitoring system may be used to meet the requirements of paragraphs (a)(1) and (a)(3) of this section. A single certified diluent monitor may be used to meet the requirements of paragraphs (a)(2) and (a)(3) of this section. A single automated data acquisition and handling system may be used to meet the requirements of paragraphs (a)(1) through (a)(4) of this section.

* * * * *

§ 75.11 [Amended]

8. Section 75.11 is amended by:

a. Revising the word ''psychometric'' in paragraph (b)(2) to read ''psychrometric'';

b. In the second sentence of paragraph (e)(1) by adding the words ''(according to the applicable equation in section 5.2 of appendix F to this part)'' after the word ''monitor'', and by removing the words '', and equation D–5 in appendix D to this part'';

c. In paragraph (e)(2) by revising in the first sentence the words ''§ 75.55 or § 75.58, as applicable,'' to read ''§ 75.58,'', and by, in the second sentence, adding the word ''rate'' after ''heat input'' and revising the words ''§ 75.54(b)(5) or § 75.57(b)(5), as applicable'' to read § 75.57(b)(5)'';

d. In paragraph (e)(3), by removing the third sentence, removing the period at the end of the second sentence and adding a colon, removing the words ''then on and after April 1, 2000,'' in the second sentence, and by revising the words ''be subject to'' to read ''meet'' in the second sentence; and

e. In the first sentence of paragraph (e)(3)(iii) by adding the words ''bias-adjusted'' before the words ''hourly average''.

9. Section 75.12 is amended by:

a. Revising the section heading;

b. In paragraph (a) by adding the word ''(CEMS)'' after the words ''continuous emission monitoring system'' in the first sentence and by revising the words ''NO_X continuous emission monitoring system'' to read '' NO_X-diluent CEMS'' in the second sentence;

c. In paragraph (d)(2) by adding the word ''-diluent'' after NO_X in the second sentence, and by adding a new third sentence; and

d. In paragraph (e) by revising the reference to ''(c)'' to read ''(d)''.

The revisions and additions read as follows:

§ 75.12 Specific provisions for monitoring NO_X emission rate (NO_X-diluent monitoring systems).

* * * * *

(d) * * *

(2) * * * If the required CEMS has not been installed and certified by that date, the owner or operator shall report the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter) for each unit operating hour, starting with the first unit operating hour after the deadline and continuing until the CEMS has been provisionally certified.

* * * * *

§ 75.13 [Amended]

10. Section 75.13 is amended by:

a. In paragraph (b), by revising in the heading the words ''Appendix G of'' to read ''appendix G to'', and by revising in the first sentence the words ''may provide information satisfactory to the Administrator'' to read ''shall follow the procedures in appendix G to this part''; and

b. In paragraph (c) by revising in the first sentence the word ''may'' to read ''shall'' and the words ''dry basis'' to read ''dry basis (or where Equation F–14b in appendix F to this part is used to determine CO_2 concentration), either'', and by revising the comma after the reference to ''§ 75.11(b)(1)'' to a semicolon.

§ 75.15 [Reserved]

11. Section 75.15 is removed and reserved.

12. Section 75.16 is amended by:

a. Removing the hyphen from the word ''by-pass'' in the section heading;

b. Removing and reserving paragraph (a);

c. Revising paragraph (b) heading and introductory text;

d. Revising paragraph (c);

e. Amending paragraphs (e) heading, (e) introductory text, (e)(2), (e)(3), and (e)(4) by adding the word ''rate'' after each occurrence of the words ''heat input'';

f. In paragraph (e)(1) by revising in the first sentence the words ''choose to install'' to read ''use the flow rate and diluent'', by removing in the first sentence the words ''wherever flow and diluent monitor measurements are used to determine the heat input,'', by revising the words ''(a) through (d)'' to read ''(b) through (d)'' in the first sentence, by revising the words ''(a)(1)(ii), (a)(2)(ii), (b)(1)(ii),'' to read ''(b)(1)(ii)'', and by adding at the end of the paragraph the words '', according to paragraph (e)(3) of this section'';

g. In paragraph (e)(2) by revising the words ''appendix F of'' to read ''appendix F to''; and

h. In paragraph (e)(3) by adding in the second sentence the words '', in conjunction with the appropriate unit and stack operating times'' after the words ''total steam flow for all units utilizing the common stack''.

The revisions and additions read as follows:

§ 75.16 Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO_2 emissions and heat input determinations.

(a) [Reserved]

(b) *Common stack procedures.* The following procedures shall be used when more than one unit uses a common stack:

* * * * *

(c) *Unit with bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack so as to avoid the installed SO_2 continuous emission monitoring system and flow monitoring system, the owner or operator shall either:

(1) Install, certify, operate, and maintain separate SO_2 continuous emission monitoring systems and flow monitoring systems on the main stack and the bypass stack and calculate SO_2 mass emissions for the unit as the sum of the SO_2 mass emissions measured at the two stacks; or

(2) Monitor SO_2 mass emissions at the main stack using SO_2 and flow rate monitoring systems and measure SO_2 mass emissions at the bypass stack using the reference methods in § 75.22(b) for SO_2 and flow rate and calculate SO_2 mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain SO_2 and flow rate monitoring systems only on the main stack. If this option is chosen, report the following values for each hour during which emissions pass through the bypass stack: the maximum potential concentration of SO_2 as determined under section 2.1.1.1 of appendix A to this part (or, if available, the SO_2 concentration measured by a certified monitor located at the control device inlet may be reported instead), and the hourly volumetric flow rate value that would be substituted for the flow monitor installed on the main stack or flue under the missing data procedures in subpart D of this part if data from the flow monitor installed on the main stack or flue were missing for the hour. The maximum potential SO_2 concentration may be specific to the type of fuel combusted in the unit during the bypass (*see* § 75.33(b)(5)). The option in this paragraph, (c)(3), may only be used if use of the bypass stack is limited to unit startup, emergency situations (e.g., malfunction of a flue gas desulfurization system), and periods of routine maintenance of the flue gas desulfurization system or maintenance on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, with respect to SO_2 or any other parameter that is monitored only at the main stack. Calculate SO_2 mass emissions for the unit as the sum of the emissions calculated with the substitute values and the emissions recorded by the SO_2

and flow monitoring systems installed on the main stack.

* * * * *

13. Section 75.17 is amended by:

a. Removing the hyphen from the word ''by-pass'' in the section heading;

b. In the introductory text by revising the words ''and (c)'' to read ''(c), and (d)'';

c. In paragraph (b)(1) by revising the word ''NO_X'' to read ''NO_X-diluent'';

d. Revising the paragraph heading and first sentence of paragraph (c) introductory text;

e. Revising paragraphs (c)(1) and (c)(2); and

f. Adding new paragraph (d).

The revisions and additions read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, bypass, and multiple stacks for NO_X emission rate.

* * * * *

(c) *Unit with multiple stacks or ducts.* When the flue gases from an affected unit discharge to the atmosphere through two or more stacks or when flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than the stack, the owner or operator shall monitor the NO_X emission rate in a way that is representative of each affected unit. * * *

(1) Install, certify, operate, and maintain a NO_X-diluent continuous emission monitoring system and a flow monitoring system in each stack or duct and determine the NO_X emission rate for the unit as the Btu-weighted average of the NO_X emission rates measured in the stacks or ducts using the heat input estimation procedures in appendix F to this part. Alternatively, for units that are eligible to use the procedures of appendix D to this part, the owner or operator may monitor heat input and NO_X emission rate at the unit level, in lieu of installing flow monitors on each stack or duct. If this alternative unit-level monitoring is performed, report, for each unit operating hour, the highest emission rate measured by any of the NO_X-diluent monitoring systems installed on the individual stacks or ducts as the hourly NO_X emission rate for the unit, and report the hourly unit heat input as determined under appendix D to this part. Also, when this alternative unit-level monitoring is performed, the applicable NO_X missing data procedures in §§ 75.31 or 75.33 shall be used for each unit operating hour in which a quality-assured NO_X emission rate is not obtained for one or more of the individual stacks or ducts; or

(2) Provided that the products of combustion are well-mixed, install, certify, operate, and maintain a NO_X continuous emission monitoring system in one stack or duct from the affected unit and record the monitored value as the NO_X emission rate for the unit. The owner or operator shall account for NO_X emissions from the unit during all times when the unit combusts fuel. Therefore, this option shall not be used if the monitored stack or duct can be bypassed (*e.g.,* by using dampers). Follow the procedure in § 75.17(d) for units with bypass stacks. Further, this option shall not be used unless the monitored NO_X emission rate truly represents the NO_X emissions discharged to the atmosphere (*e.g.,* the option is disallowed if there are any additional NO_X emission controls downstream of the monitored location).

(d) *Unit with a main stack and bypass stack configuration.* For an affected unit with a discharge configuration consisting of a main stack and a bypass stack, the owner or operator shall either:

(1) Follow the procedures in paragraph (c)(1) of this section; or

(2) Install, certify, operate, and maintain a NO_X-diluent CEMS only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, with respect to NO_X or any other parameter that is monitored only at the main stack. For each unit operating hour in which the bypass stack is used, report the maximum potential NO_X emission rate (as defined in § 72.2 of this chapter). The maximum potential NO_X emission rate may be specific to the type of fuel combusted in the unit during the bypass (*see* § 75.33(c)(8)).

14. Section 75.19 is amended by:

a. Revising the section heading, paragraph (a), and paragraphs (b)(1), (b)(2), (b)(3), (b)(4)(i), (b)(5), (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (c)(1)(iv)(C), (c)(3)(ii)(C), (c)(3)(ii)(D) introductory text, (c)(3)(ii)(D)(*1*), (c)(3)(ii)(E), (c)(3)(ii)(F), (c)(3)(ii)(G), (c)(3)(ii)(H), and (e)(2);

b. In paragraph (b)(4) introductory text by revising the words ''unit commencing operation after January 1, 1997'' to read ''new or newly-affected unit'' and the words ''a low'' to read ''the low'';

c. Amending paragraph (b)(4)(ii) by revising the words ''NO_X, and CO_2'' to read ''CO_2, and/or NO_X'';

d. Amending paragraph (b)(4)(iii) by revising the words ''and NO_X'' in the first sentence to read ''and/or NO_X'', revising the second sentence, and by revising the word ''The'' in the third sentence to read ''For Acid Rain Program LME units, the'';

e. In paragraph (c)(1)(iv) introductory text by adding a new sentence after the second sentence;

f. By revising in the first sentence of paragraph (c)(1)(iv)(A) the words ''(c)(1)(iv)(F) and (G) of this paragraph'' to read ''(c)(1)(iv)(F), (c)(1)(iv)(G), and (c)(1)(iv)(I) of this section'' and by adding new paragraphs (c)(1)(iv)(A)(*3*) and (*4*) and Equation LM–1a;

g. Removing and reserving paragraph (c)(1)(iv)(B)(3);

h. Amending paragraph (c)(1)(iv)(B)(*4*) by revising the reference to ''(c)(1)(iv)(B)(*3*)'' to read ''(c)(1)(iv)(B)(*1*)'';

i. In paragraph (c)(1)(iv)(D) by revising in the first sentence the words '', each unit in a group of units sharing a common fuel supply, or'' to read ''or group of'', by adding in the first sentence the words ''(20 calendar quarters)'' after the words ''five years'', and by adding a new sentence after the second sentence;

j. Amending paragraph (c)(1)(iv)(E) by removing the words '', each low mass emission unit in a group of units combusting a common fuel,'';

k. Revising the first and last sentences of (c)(1)(iv)(G);

l. Amending the first sentence of (c)(1)(iv)(H) by revising the first occurrence of the words ''NO_X emission controls,'' to read ''add-on NO_X emission controls, and for units that use dry low-NO_X technology,'';

m. Amending the last sentence of (c)(1)(iv)(H)(*1*) by adding the words '', and the appropriate default NO_X emission rate from Table LM–2 shall be reported instead'' after the words ''that hour'';

n. Redesignating existing paragraph (c)(1)(iv)(H)(*2*) as (c)(1)(iv)(H)(*3*), and adding the words '', and the appropriate default NO_X emission rate from Table LM–2 shall be reported instead'' after the words ''that hour'' and adding new paragraph (c)(1)(iv)(H)(*2*);

o. Adding new paragraphs (c)(1)(iv)(I) and (c)(1)(iv)(J);

p. In paragraph (c)(2) introductory text by adding the words '', except that for unmanned facilities, the records may be kept at a central location, rather than on-site'' after the word ''inspection'';

q. In paragraph (c)(2)(iii) by revising the word ''output'' to read ''load'' and by adding the words ''per hour'' after the words ''pounds of steam'';

r. In paragraph (c)(2)(iv) by adding the words ''add-on'' after the words ''unit with'' and adding the words ''and each unit that uses dry low-NO_X technology'' after the words ''of any kind'';

s. In paragraph (c)(3)(i)(A) by adding ''HI_{hr},'' after the words ''of this section,'' in the first sentence, by revising Eq. LM–1 in paragraph (c)(3)(i)(B) and the accompanying variable definitions, and by adding a new paragraph (c)(3)(i)(D);

t. In paragraphs (c)(3)(ii)(I) and (c)(3)(ii)(J) by revising the definition of variables following Equations LM–7, LM–8, LM–7a, and LM–8a;

u. In paragraph (c)(4)(i)(A) by adding the words ''(Acid Rain Program units, only)'' after the word ''unit'' in the first sentence, by capitalizing the first letter of the word ''where'', and by revising the definition of variable ''EF_{SO2}'' for Equation LM–9;

v. In paragraph (c)(4)(ii)(A) by correcting the variables ''WNO_X'' and ''$EFNO_X$'' to read ''W_{NOX}'' and ''EF_{NOX}'';

w. In paragraph (c)(4)(ii)(C) by adding a new sentence to the end of this paragraph;

x. In paragraph (c)(4)(iii)(A) by adding the words ''(Acid Rain Program units, only)'' after the word ''unit'' in the first sentence and by revising the definition of the variable ''EFCO2'' under Equation LM–11;

y. Amending paragraph (e)(5) by revising the words ''which have NO_X emission controls of any kind'' to read ''which has add-on NO_X emission controls of any kind or uses dry low-NO_X technology'';

z. Adding new paragraph (e)(6) between paragraph (e)(5) and table LM–1;

aa. Amending Table LM–2 that follows paragraph (e) by revising the words ''Boiler type'' to read ''Unit type'' in heading for the first column;

bb. Amending Table LM–3 that follows paragraph (e) by revising the words ''Natural Gas'' to read ''Pipeline (or other) Natural Gas'' in the first column; and

cc. Amending Table LM–5 that follows paragraph (e) by adding the word ''Other'' before ''Natural Gas'' in the first column of the table.

The revisions and additions read as follows:

§ 75.19 Optional SO_2, NO_X, and CO_2 emissions calculation for low mass emissions (LME) units.

(a) *Applicability and qualification.* (1) For units that meet the requirements of this paragraph (a)(1) and paragraphs (a)(2) and (b) of this section, the low mass emissions excepted methodology in paragraph (c) of this section may be used in lieu of continuous emission monitoring systems or, if applicable, in lieu of excepted methods under appendix D or E to this part, for the purpose of determining hourly heat input and hourly NO_X, SO_2, and CO_2 mass emissions under this part.

(i) A low mass emissions unit is an affected unit that is gas-fired, or oil-fired (as defined in § 72.2 of this chapter), and for which:

(A) An initial demonstration is provided, in accordance with paragraph (a)(2) of this section, which shows that the unit emits:

(*1*) No more than 25 tons of SO_2 annually and less than 100 tons of NO_X annually, for Acid Rain Program affected units. If the unit is also subject to the provisions of subpart H of this part, no more than 50 of the allowable annual tons of NO_X may be emitted during the ozone season; or

(*2*) Less than 100 tons of NO_X annually *and* no more than 50 tons of NO_X during the ozone season, for non-Acid Rain Program units subject to the provisions of subpart H of this part, for which the owner or operator reports emissions data on a year-round basis, in accordance with § 75.74(a) or § 75.74(b); or

(*3*) No more than 50 tons of NO_X per ozone season, for non-Acid Rain Program units subject to the provisions of subpart H of this part, for which the owner or operator reports emissions data only during the ozone season, in accordance with § 75.74(b); and

(B) An annual demonstration is provided thereafter, using one of the allowable methodologies in paragraph (c) of this section, showing that the low mass emissions unit continues to emit no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section.

(C) This paragraph, (a)(1)(i)(C), applies only to a unit that is subject to an SO_2 emission limitation under the Acid Rain Program, and that combusts a gaseous fuel other than pipeline natural gas or natural gas (as defined in § 72.2 of this chapter). The owner or operator of such a unit must quantify the sulfur content and variability of the gaseous fuel by performing the demonstration described in section 2.3.6 of appendix D to this part, in order for the unit to qualify for LME unit status. If the results of that demonstration show that the gaseous fuel qualifies under paragraph (b) of section 2.3.6 to use a default SO_2 emission rate to report SO_2 mass emissions under this part, the unit is eligible for LME unit status.

(ii) Each qualifying LME unit must start using the low mass emissions excepted methodology as follows:

(A) For a unit that reports emission data on a year-round basis, begin using the methodology in the first unit operating hour in the calendar year designated in the certification application as the first year that the methodology will be used; or

(B) For a unit that is subject to Subpart H of this part and that reports only during the ozone season according to § 75.74(c), begin using the methodology in the first unit operating hour in the ozone season designated in the certification application as the first ozone season that the methodology will be used.

(C) For a new or newly-affected unit, see paragraph (b)(4) of this section for additional guidance.

(2) A unit may initially qualify as a low mass emissions unit if the designated representative submits a certification application to use the LME methodology (as described in § 75.63(a)(1)(ii) and in this paragraph, (a)(2)) and the Administrator (or permitting authority, as applicable) certifies the use of such methodology. The certification application shall be submitted no later than 45 days prior to the date on which use of the low mass emissions methodology is expected to commence, and the application must contain:

(i) A statement identifying the projected date on which the LME methodology will first be used. The projected commencement date shall be consistent with paragraphs (a)(1)(ii) and (b)(4) of this section, as applicable; and

(ii) Either:

(A) Actual SO_2 and/or NO_X mass emissions data (as applicable) for each of the three calendar years (or ozone seasons) prior to the calendar year in which the certification application is submitted demonstrating to the satisfaction of the Administrator or (if applicable) the permitting authority, that the unit emitted less than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. For the purposes of this paragraph, (a)(2)(ii)(A), the required actual SO_2 or NO_X mass emissions for each qualifying year or ozone season shall be determined using the SO_2, NO_X and heat input data reported to the Administrator in the electronic quarterly reports required under § 75.64 or under the Ozone Transport Commission (OTC) NO_X Budget Trading Program. Notwithstanding this requirement, in the absence of such electronic reports, an estimate of the actual emissions for each of the previous three years (or ozone seasons) shall be provided, using either the maximum rated heat input methodology described in paragraph (c)(3)(i) of this section or procedures consistent with the long term fuel flow heat input methodology described in paragraph (c)(3)(ii) of this section, in conjunction with the appropriate SO_2 or NO_X emission rate from paragraph

(c)(1)(i) of this section for SO_2, and paragraph (c)(1)(ii) or (c)(1)(iv) of this section for NO_X. Alternatively, the initial estimate of the NO_X emission rate may be based on historical emission test data that is representative of operation at normal load or historical data from a CEMS certified under part 60 of this chapter or under a state CEM program; or

(B) When the three full years (or ozone seasons) of actual SO_2 and NO_X mass emissions data (or reliable estimates thereof) described under paragraph (a)(2)(ii)(A) of this section do not exist, the designated representative may submit an application to use the low mass emissions excepted methodology based upon a combination of actual historical SO_2 and NO_X mass emissions data and projected SO_2 and NO_X mass emissions, totaling three years (or ozone seasons). Except as provided in paragraph (a)(3) of this section, actual data must be used for any years (or ozone seasons) in which such data exists and projected data should be used for any remaining future years (or ozone seasons) needed to provide emissions data for three consecutive calender years (or ozone seasons). For example, if a unit commenced operation two years ago, the designated representative may submit actual, historical data for the previous two years and one year of projected emissions for the current calendar year or, for a new unit, the designated representative may submit three years of projected emissions, beginning with the current calendar year. Any actual or projected annual emissions must demonstrate to the satisfaction of the Administrator that the unit will emit less than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. Projected emissions shall be calculated using either the appropriate default emission rates from paragraphs (c)(1)(i) and (c)(1)(ii) of this section (or, alternatively for NO_X, a conservative estimate of the NO_X emission rate, as described in paragraph (a)(4) of this section), in conjunction with projections of unit operating hours or fuel type and fuel usage, according to one of the allowable calculation methodologies in paragraph (c) of this section; and

(iii) A description of the methodology from paragraph (c) of this section that will be used to demonstrate on-going compliance under paragraph (b) of this section; and

(iv) Appropriate documentation demonstrating that the unit is eligible to use projected emissions to qualify for LME status under paragraph (a)(3) of this section (if applicable).

(3) In the following circumstances, projected emissions for a future year (or years) may be used in lieu of the actual emissions data from one (or more) of the three years (or ozone seasons) preceding the year of the certification application:

(i) If the owner or operator takes an enforceable permit restriction on the number of annual or ozone season unit operating hours for the future year (or years), such that the unit will emit no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section; or

(ii) If the actual emissions for one (or more) of the three years (or ozone seasons) prior to the year of the certification application is not representative of the present and expected future emissions from the unit, because the owner or operator has recently installed emission controls on the unit.

(4) When the owner or operator elects to demonstrate initial LME qualification and on-going compliance using a fuel-and-unit-specific NO_X emission rate in accordance with paragraph (c)(1)(iv) of this section, there will be instances (e.g., for a new or newly-affected unit) where it is not possible to determine that NO_X emission rate prior to submitting the certification application. In such cases, if the generic default NO_X emission rates in Table LM–2 of this section are inappropriately high for the unit, the owner or operator may use a more representative, but conservatively high estimate of the expected NO_X emission rate, for the purposes of the initial monitoring plan submittal and to calculate the unit's projected annual or ozone season emissions under paragraph (a)(2)(ii)(B) of this section. For example, the NO_X emission rate could, as described in paragraph (a)(2)(ii)(A) of this section, be estimated using historical CEM data or historical emission test data that is representative of operation at normal load. The NO_X emission limit specified in the operating permit for the unit could also be used to estimate the NO_X emission rate (except for units equipped with SCR or SNCR), or, consistent with paragraph (c)(1)(iv)(C)(*4*) of this section, for a unit that uses SCR or SNCR to control NO_X emissions, an estimated default NO_X emission rate of 0.15 lb/mmBtu could be used. However, these estimated NO_X emission rates may not be used for reporting purposes in the time period extending from the first hour in which the LME methodology is used to the date and hour on which the fuel-and-unit-specific NO_X emission rate testing is completed. Rather, in that interval, the owner or operator shall either report the appropriate default NO_X emission rate from Table LM–2, or shall report the maximum potential NO_X emission rate, calculated in accordance with § 72.2 of this chapter and section 2.1.2.1 of appendix A to this part. Then, beginning with the first unit operating hour after completion of the tests, the appropriate default NO_X emission rate(s) obtained from the fuel-and-unit-specific testing shall be used for emissions reporting.

(b) *On-going qualification and disqualification.* (1) Once a low mass emissions unit has qualified for and has started using the low mass emissions excepted methodology, an annual demonstration is required, showing that the unit continues to emit no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. The calculation methodology used for the annual demonstration shall be the methodology described in the certification application under paragraph (a)(2)(iii) of this section.

(2) If any low mass emissions unit fails to provide the required annual demonstration under paragraph (b)(1) of this section, such that the calculated cumulative emissions for the unit exceed the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section at the end of any calendar year or ozone season, then:

(i) The low mass emissions unit shall be disqualified from using the low mass emissions excepted methodology; and

(ii) The owner or operator of the low mass emissions unit shall install and certify monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13, and shall report SO_2 (Acid Rain Program units, only), NO_X, and CO_2 (Acid Rain Program units, only) emissions data and heat input data from such monitoring systems by December 31 of the calendar year following the year in which the unit exceeded the number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section; and

(iii) If the required monitoring systems have not been installed and certified by the applicable deadline in paragraph (b)(2)(ii) of this section, the owner or operator shall report the following values for each unit operating hour, beginning with the first operating hour after the deadline and continuing until the monitoring systems have been provisionally certified: the maximum potential hourly heat input for the unit, as defined in § 72.2 of this chapter; the SO_2 emissions, in lb/hr, calculated using the applicable default SO_2 emission rate from paragraph (c)(1)(i) of this section and the maximum potential hourly unit heat input; the CO_2

emissions, in tons/hr, calculated using the applicable default CO_2 emission rate from paragraph (c)(1)(iii) of this section and the maximum potential hourly unit heat input; and the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter.

(3) If a low mass emissions unit that initially qualifies to use the low mass emissions excepted methodology under this section changes fuels, such that a fuel other than those allowed for use in the low mass emissions methodology is combusted in the unit, the unit shall be disqualified from using the low mass emissions excepted methodology as of the first hour that the new fuel is combusted in the unit. The owner or operator shall install and certify SO_2 (Acid Rain Program units, only), NO_X, and CO_2 (Acid Rain Program units, only) and flow (if necessary) monitoring systems that meet the requirements of §§ 75.11, 75.12, and 75.13 prior to a change to such fuel, and shall report emissions data from such monitoring systems beginning with the date and hour on which the new fuel is first combusted in the unit. If the required monitoring systems are not installed and certified prior to the fuel switch, the owner or operator shall report (as applicable) the maximum potential concentration of SO_2, CO_2 and NO_X, the maximum potential NO_X emission rate, the maximum potential flowrate, the maximum potential hourly heat input and the maximum (or minimum, if appropriate) potential moisture percentage, from the date and hour of the fuel switch until the monitoring systems are certified or until probationary calibration error tests of the monitors are passed and the conditional data validation procedures in § 75.20(b)(3) begin to be used. All maximum and minimum potential values shall be specific to the new fuel and shall be determined in a manner consistent with section 2 of appendix A to this part and § 72.2 of this chapter. The owner or operator must notify the Administrator (or the permitting authority) in the case where a unit switches fuels without previously having installed and certified a SO_2, NO_X and CO_2 monitoring system meeting the requirements of §§ 75.11, 75.12, and 75.13.

(4) * * *

(i) Keep the records specified in paragraph (c)(2) of this section, beginning with the date and hour of commencement of commercial operation, for a new unit subject to an Acid Rain emission limitation, and beginning with the date and hour of the commencement of operation, for a new unit subject to a NO_X mass reduction program under subpart H of this part. For newly-affected units, the records in paragraph (c)(2) of this section shall be kept as follows:

(A) For Acid Rain Program units, begin keeping the records as of the first hour of commercial operation of the unit following the date on which the unit becomes affected; or

(B) For units subject to a NO_X mass reduction program under subpart H of this part, begin keeping the records as of the first hour of unit operation following the date on which the unit becomes an affected unit;

* * * * *

(iii)* * * For example, use the default emission rates in table LM–1, LM–2, and LM–3 of this section or use the fuel-and-unit-specific NO_X emission rate determined according to paragraph (c)(1)(iv) of this section. * * *

(5) A low mass emissions unit that has been disqualified from using the low mass emissions excepted methodology may subsequently submit an application to qualify again to use the low mass emissions methodology under paragraph (a)(2) of this section only if, following the non-compliant year (or ozone season), at least three full years (or ozone seasons) of actual, monitored emissions data is obtained showing that the unit emitted no more than the applicable number of tons of SO_2 and/or NO_X specified in paragraph (a)(1)(i)(A) of this section. Further, the designated representative or authorized account representative must certify in the application that the unit operation for the years or ozone seasons for which the emissions were monitored are representative of the projected future operation of the unit.

(c) *Low mass emissions excepted methodology, calculations, and values.*

(1) *Determination of SO_2, NO_X, and CO_2 emission rates.*

(i) If the unit combusts only natural gas and/or fuel oil, use Table LM–1 of this section to determine the appropriate SO_2 emission rate for use in calculating hourly SO_2 mass emissions under this section (Acid Rain Program units, only). If the unit combusts gaseous fuel(s) other than natural gas, the owner or operator shall use the procedures in section 2.3.6 of appendix D to this part to document the total sulfur content of each such fuel and to determine the appropriate default SO_2 emission rate for each such fuel.

(ii) If the unit combusts only natural gas and/or fuel oil, use either the appropriate NO_X emission factor from Table LM–2 of this section, or a fuel-and-unit-specific NO_X emission rate determined according to paragraph (c)(1)(iv) of this section, to calculate hourly NO_X mass emissions under this section. If the unit combusts a gaseous fuel other than pipeline natural gas or natural gas, the owner or operator shall determine a fuel-and-unit-specific NO_X emission rate according to paragraph (c)(1)(iv) of this section.

(iii) If the unit combusts only natural gas and/or fuel oil, use Table LM–3 of this section to determine the appropriate CO_2 emission rate for use in calculating hourly CO_2 mass emissions under this section (Acid Rain Program units, only). If the unit combusts a gaseous fuel other than pipeline natural gas or natural gas, the owner or operator shall determine a fuel-and-unit-specific CO_2 emission rate for the fuel, as follows:

(A) Derive a carbon-based F-factor for the fuel, using fuel sampling and analysis, as described in section 3.3.6 of appendix F to this part; and

(B) Use Equation G–4 in appendix G to this part to derive the default CO_2 emission rate. Rearrange the equation, solving it for the ratio of W_{CO2}/H (this ratio will yield an emission rate, in units of tons/mmBtu). Then, substitute the carbon-based F-factor determined in paragraph (c)(1)(iii)(A) of this section into the rearranged equation to determine the default CO_2 emission rate for the unit.

(iv) * * * The testing must be completed in a timely manner, such that the test results are reported electronically no later than the end of the calendar year or ozone season in which the LME methodology is first used. * * *

(A) * * *

(*3*) When using Method 20 for turbines do not correct the NO_X concentration to 15% O_2.

(*4*) If the testing is performed on an uncontrolled diffusion flame turbine, a correction to the observed average NO_X concentration from each run of the Method 20 test must be applied using the following Equation LM–1a.

$$NO_{X_{corr}} = NO_{X_{obs}} \left(\frac{P_r}{P_o}\right)^{0.5} e^{19(H_o - H_r)} \left(\frac{T_r}{T_a}\right)^{1.53} \qquad \text{(Eq. LM-1a)}$$

Where:

$NO_{X_{corr}}$ = Corrected NO_X concentration (ppm).

$NO_{X_{obs}}$ = Average measured NO_X concentration for each run of the Method 20 test (ppm).

P_r = Average annual atmospheric pressure (or average ozone season atmospheric pressure for a Subpart H unit that reports data only during the ozone season) at the nearest weather station (e.g., a standardized NOAA weather station located at the airport) for the year (or ozone season) prior to the year of the test (mm Hg).

P_o = Observed atmospheric pressure during the test run (mm Hg).

H_r = Average annual atmospheric humidity ratio (or average ozone season humidity ratio for a Subpart H unit that reports data only during the ozone season) at the nearest weather station, for the year (or ozone season) prior to the year of the test (g H_2O/g air).

H_o = Observed humidity ratio during the test run (g H_2O/g air).

T_r = Average annual atmospheric temperature (or average ozone season atmospheric temperature for a Subpart H unit that reports data only during the ozone season) at the nearest weather station, for the year (or ozone season) prior to the year of the test (° K).

T_a = Observed atmospheric temperature during the test run (° K).

(B) * * *

(*3*) [Reserved]

* * * * *

(C) Based on the results of the part 75 appendix E testing, determine the fuel-and-unit-specific NO_X emission rate as follows:

(*1*) Except for LME units that use selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) to control NO_X emissions, the highest three-run average NO_X emission rate obtained at any load in the appendix E test for a particular type of fuel shall be the fuel-and-unit-specific NO_X emission rate, for that type of fuel.

(*2*) [Reserved]

(*3*) For a group of identical low mass emissions units (except for units that use SCR or SNCR to control NO_X emissions), the fuel-and-unit-specific NO_X emission rate for all units in the group, for a particular type of fuel, shall be the highest three-run average NO_X emission rate obtained at any tested load from any unit tested in the group, for that type of fuel.

(*4*) Except as provided in paragraphs (c)(1)(iv)(C)(*7*) and (c)(1)(iv)(C)(*8*) of this section, for an individual low mass emissions unit which uses SCR or SNCR to control NO_X emissions, the fuel-and-unit-specific NO_X emission rate for each type of fuel combusted in the unit shall be the higher of:

(*i*) The highest three-run average emission rate from any load of the appendix E test for that type of fuel; or

(*ii*) 0.15 lb/mmBtu.

(*5*) [Reserved]

(*6*) Except as provided in paragraphs (c)(1)(iv)(C)(*7*) and (c)(1)(iv)(C)(*8*) of this section, for a group of identical low mass emissions units that are all equipped with SCR or SNCR to control NO_X emissions, the fuel-and-unit-specific NO_X emission rate for each unit in the group of units, for a particular type of fuel, shall be the higher of:

(*i*) The highest three-run average NO_X emission rate at any load from all appendix E tests of all tested units in the group, for that type of fuel; or

(*ii*) 0.15 lb/mmBtu.

(*7*) Notwithstanding the requirements of paragraphs (c)(1)(iv)(C)(*4*) and (c)(1)(iv)(C)(*6*) of this section, for a unit (or group of identical units) equipped with SCR (or SNCR) *and* water (or steam) injection to control NO_X emissions:

(*i*) If the appendix E testing is performed when the water (or steam) injection is in use *and* either upstream of the SCR or SNCR or during a time period when the SCR or SNCR is out of service; then

(*ii*) The highest three-run average emission rate from the appendix E testing may be used as the fuel-and-unit-specific NO_X emission rate for the unit (or, if applicable, for each unit in the group), for each unit operating hour in which the water-to-fuel ratio is within the acceptable range established during the appendix E testing.

(*8*) Notwithstanding the requirements of paragraphs (c)(1)(iv)(C)(*4*) and (c)(1)(iv)(C)(*6*) of this section, for a unit (or group of identical units) equipped with SCR (or SNCR) *and* uses dry low-NO_X technology to control NO_X emissions:

(*i*) If the appendix E testing is performed during a time period when the dry low-NO_X controls are in use, but the SCR or SNCR is out of service; then

(*ii*) The highest three-run average emission rate from the appendix E testing may be used as the fuel-and-unit-specific NO_X emission rate for the unit (or, if applicable, for each unit in the group), for each unit operating hour in which the parametric data described in paragraph (c)(1)(iv)(H)(*2*) of this section demonstrate that the dry low-NO_X controls are operating in the premixed or low-NO_X mode.

(*9*) For an individual combustion turbine (or a group of identical turbines) that operate principally at base load (or at a set point temperature), but are capable of operating at a higher peak load (or higher internal operating temperature), the fuel-and-unit-specific NO_X emission rate for the unit (or for each unit in the group) shall be as follows:

(*i*) If the testing is done only at base load, use the three-run average NO_X emission rate for base load operating hours and 1.15 times that emission rate for peak load operating hours; or

(*ii*) If the testing is done at both base load and peak load, use the three-run average NO_X emission rate from the base load testing for base load operating hours and the three-run average NO_X emission rate from the peak load testing for peak load operating hours.

(D) * * * Testing shall be done at the number of loads specified in paragraph (c)(1)(iv)(A) or (c)(1)(iv)(I) of this section, as applicable. * * *

* * * * *

(G) Low mass emissions units for which at least 3 years of quality-assured NO_X emission rate data from a NO_X-diluent CEMS and corresponding fuel usage data are available may determine fuel-and-unit-specific NO_X emission rates from the actual data using the following procedure. * * * Use the 95th percentile value for each data set as the fuel-and-unit-specific NO_X emission rate, except that for a unit that uses SCR or SNCR for NO_X emission control, if the 95th percentile value is less than 0.15 lb/mmBtu, a value of 0.15 lb/mmBtu shall be used as the fuel-and-unit-specific NO_X emission rate.

(H) * * *

(*2*) For a low mass emissions unit that uses dry low-NO_X premix technology to control NO_X emissions, proper operation of the emission controls means that the unit is in the low-NO_X or premixed combustion mode, and fired with natural gas. Evidence of operation in the low-NO_X or premixed mode shall be provided by monitoring the appropriate turbine operating

parameters. These parameters may include percentage of full load, turbine exhaust temperature, combustion reference temperature, compressor discharge pressure, fuel and air valve positions, dynamic pressure pulsations, internal guide vane (IGV) position, and flame detection or flame scanner condition. The acceptable values and ranges for all parameters monitored shall be specified in the monitoring plan for the unit, and the parameters shall be monitored during each subsequent operating hour. If one or more of these parameters is not within the acceptable range or at an acceptable value in a given operating hour, the fuel-and-unit-specific NO_X emission rate may not be used for that hour, and the appropriate default NO_X emission rate from Table LM–2 shall be reported instead. When the unit is fired with oil the appropriate default value from Table LM–2 shall be reported.

* * * * *

(I) Notwithstanding the requirements in paragraph (c)(1)(iv)(A) of this section, the appendix E testing to determine (or re-determine) the fuel-specific, unit-specific NO_X emission rate for a unit (or for each unit in a group of identical units) may be performed at fewer than four loads, under the following circumstances:

(*1*) Testing may be done at one load level if the data analysis described in paragraph (c)(1)(iv)(J) of this section is performed and the results show that the unit has operated (or all units in the group of identical units have operated) at a single load level for at least 85.0 percent of all operating hours in the previous three years (12 calendar quarters) prior to the calendar quarter of the appendix E testing. For combustion turbines that are operated to produce approximately constant output (in MW) but which use internal operating and exhaust temperatures and not the actual output in MW to control the operation of the turbine, the internal operating temperature set point may be used as a surrogate for load in demonstrating that the unit qualifies for single-load testing. If the data analysis shows that the unit does not qualify for single-load testing, testing may be done at two (or three) load levels if the unit has operated (or if all units in the group of identical units have operated) cumulatively at two (or three) load levels for at least 85.0 percent of all operating hours in the previous three years; or

(*2*) If a multiple-load appendix E test was initially performed for a unit (or group of identical units) to determine the fuel-and-unit specific NO_X emission rate, then the periodic retests required under paragraph (c)(1)(iv)(D) of this section may be single-load tests, performed at the load level for which the highest average NO_X emission rate was obtained in the initial test.

(J) To determine whether a unit qualifies for testing at fewer than four loads under paragraph (c)(1)(iv)(I) of this section, follow the procedures in paragraph (c)(1)(iv)(J)(*1*) or (c)(1)(iv)(J)(*2*) of this section, as applicable.

(*1*) Determine the range of operation of the unit, according to section 6.5.2.1 of appendix A to this part. Divide the range of operation into four equal load bands. For example, if the range of operation extends from 20 MW to 100 MW, the four equal load bands would be: band #1: from 20 MW to 40 MW; band #2: from 41 MW to 60 MW; band #3: from 61 MW to 80 MW; and band #4: from 81 to 100 MW. Then, perform a historical load analysis for all unit operating hours in the 12 calendar quarters preceding the quarter of the test. Alternatively, for sources that report emissions data only during the ozone season, the historical load analysis may be based on unit operation in the previous three ozone seasons, rather than unit operation in the previous 12 calendar quarters. Determine the percentage of the data that fall into each load band. For a unit that is not part of a group of identical units, if 85.0% or more of the data fall into one load band, single-load testing may be performed at any point within that load band. For a group of identical units, if each unit in the group meets the 85.0% criterion, then representative single-load testing within the load band may be performed. If the 85.0% criterion cannot be met to qualify for single-load testing but this criterion can be met cumulatively for two (or three) load levels, then testing may be performed at two (or three) loads instead of four.

(*2*) For a combustion turbine that uses exhaust temperature and not the actual output in megawatts to control the operation of the turbine (or for a group of identical units of this type), the owner or operator must document that the unit (or each unit in the group) has operated within ± 10% of the set point temperature for 85.0% of the operating hours in the previous 12 calendar quarters to qualify for single-load testing. Alternatively, for sources that report emissions data only during the ozone season, the historical set point temperature analysis may be based on unit operation in the previous three ozone seasons, rather than unit operation in the previous 12 calendar quarters. When the set point temperature is used rather than unit load to justify single-load testing, the designated representative shall certify in the monitoring plan for the unit that this is the normal manner of unit operation and shall document the setpoint temperature.

* * * * *

(3) *Heat input.* * * *

(i) *Maximum rated hourly heat input method.* * * *

(B) * * *

$$HI_{qtr} = \sum_{1}^{n} HI_{hr} \qquad \text{(Eq. LM-1)}$$

Where:

n = Number of unit operating hours in the quarter.

HI_{hr} = Hourly heat input under paragraph (c)(3)(i)(A) of this section (mmBtu).

* * * * *

(D) For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly heat input for the second calendar quarter of the year shall, for compliance purposes, include only the heat input for the months of May and June, and the cumulative ozone season heat input shall be the sum of the heat input values for May, June and the third calendar quarter of the year.

(ii) *Long term fuel flow heat input method.* * * *

(C) Except as provided in paragraph (c)(3)(ii)(C)(*3*) of this section, for each fuel combusted during a quarter, the gross calorific value of the fuel shall be determined by either:

(*1*) Using the applicable procedures for gas and oil analysis in sections 2.2 and 2.3 of appendix D to this part. If this option is chosen the highest gross calorific value recorded during the previous calendar year shall be used (or, for a new or newly-affected unit, if there are no sample results from the previous year, use the highest GCV from the samples taken in the current year); or

(*2*) Using the appropriate default gross calorific value listed in Table LM–5 of this section.

(*3*) For gaseous fuels other than pipeline natural gas or natural gas, the GCV sampling frequency shall be daily unless the results of a demonstration under section 2.3.5 of appendix D to this part show that the fuel has a low GCV variability and qualifies for monthly sampling. If daily GCV sampling is required, use the highest GCV obtained in the calendar quarter as GCV_{max} in Equation LM–3, of this section.

(D) If Eq. LM–2 is used for heat input determination, the specific gravity of each type of fuel oil combusted during the quarter shall be determined either by:

(*1*) Using the procedures in section 2.2.6 of appendix D to this part. If this option is chosen, use the highest specific gravity value recorded during the previous calendar year (or, for a new or newly-affected unit, if there are no sample results from the previous year, use the highest specific gravity from the samples taken in the current year); or

* * * * *

(E) The quarterly heat input from each type of fuel combusted during the quarter by a low mass emissions unit or group of low mass emissions units sharing a common fuel supply shall be determined using either Equation LM–2 or Equation LM–3 for oil (as applicable to the method used to quantify oil usage) and Equation LM–3 for gaseous fuels. For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly heat input for the second calendar quarter of the year shall include only the heat input for the months of May and June.

$$HI_{fuel\text{-}qtr} = M_{qtr}\frac{GCV_{max}}{10^6} \qquad \text{Eq. LM-2 (for fuel oil)}$$

Where:

$HI_{fuel\text{-}qtr}$ = Quarterly total heat input from oil (mmBtu).

M_{qtr} = Mass of oil consumed during the quarter, determined as the product of the volume of oil under paragraph (c)(3)(ii)(B) of this section and the specific gravity under paragraph (c)(3)(ii)(D) of this section (lb).

GCV_{max} = Gross calorific value of oil, as determined under paragraph (c)(3)(ii)(C) of this section (Btu/lb)

10^6 = Conversion of Btu to mmBtu.

$$HI_{fuel\text{-}qtr} = Q_{qtr}\frac{GCV_{max}}{10^6} \qquad \text{Eq. LM-3 (for gaseous fuel or fuel oil)}$$

Where:

$HI_{fuel\text{-}qtr}$ = Quarterly heat input from gaseous fuel or fuel oil (mmBtu).

Q_{qtr} = Volume of gaseous fuel or fuel oil combusted during the quarter, as determined under paragraph (c)(3)(ii)(B) of this section standard cubic feet (scf) or (gal), as applicable.

GCV_{max} = Gross calorific value of the gaseous fuel or fuel oil combusted during the quarter, as determined under paragraph (c)(3)(ii)(C) of this section (Btu/scf) or (Btu/gal), as applicable.

10^6 = Conversion of Btu to mmBtu.

(F) Use Eq. LM–4 to calculate $HI_{qtr\text{-}total}$, the quarterly heat input (mmBtu) for all fuels. $HI_{qtr\text{-}total}$, shall be the sum of the $HI_{fuel\text{-}qtr}$ values determined using Equations LM–2 and LM–3.

$$HI_{qtr\text{-}total} = \sum_{all\text{-}fuels} HI_{fuel\text{-}qtr} \qquad \text{(Eq. LM-4)}$$

(G) * * * For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the cumulative ozone season heat input shall be the sum of the quarterly heat input values for the second and third calendar quarters of the year.

(H) For each low mass emissions unit or each low mass emissions unit in an identical group of units, the owner or operator shall determine the cumulative quarterly unit load in megawatts or thousands of pounds of steam per hour. The quarterly cumulative unit load shall be the sum of the hourly unit load values recorded under paragraph (c)(2) of this section and shall be determined using Equations LM–5 or LM–6. For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the quarterly cumulative load for the second calendar quarter of the year shall include only the unit loads for the months of May and June.

$$MW_{qtr} = \sum_{all\text{-}hours} MW \qquad \text{Eq. LM-5 (for MW output)}$$

$$ST_{qtr} = \sum_{all\text{-}hours} ST \qquad \text{Eq. LM-6 (for steam output)}$$

Where:

MW_{qtr} =Sum of all unit operating loads recorded during the quarter by the unit (MW).

$ST_{fuel\text{-}qtr}$ = Sum of all hourly steam loads recorded during the quarter by the unit (klb of steam/hr).

MW = Unit operating load for a particular unit operating hour (MW).

ST = Unit steam load for a particular unit operating hour (klb of steam/hr).

(I) * * *

Where:

HI_{hr} = Hourly heat input to the unit (mmBtu).

MW_{hr} = Hourly operating load for the unit (MW).

ST_{hr} = Hourly steam load for the unit (klb of steam/hr).

(J) * * *

Where:

HI_{hr} = Hourly heat input to the individual unit (mmBtu).

MW_{hr} = Hourly operating load for the individual unit (MW).

ST_{hr} = Hourly steam load for the individual unit (klb of steam/hr).

$\Sigma^{MW}_{all\text{-}units} qtr$ = Sum of the quarterly operating loads (from Eq. LM–5) for all units in the group (MW).

$\Sigma^{ST}_{all\text{-}units} qtr$ = Sum of the quarterly steam loads (from Eq. LM–6) for all units in the group (klb of steam/hr)

(4) *Calculation of SO_2, NO_X and CO_2 mass emissions.* * * *

(i) *SO_2 mass emissions.*

(A) * * *

Where: * * *

EF_{SO2} = Either the SO_2 emission factor from Table LM–1 of this section or the fuel-and-unit-specific SO_2 emission rate from paragraph (c)(1)(i) of this section (lb/mmBtu).

* * * * *

(ii) *NO_X mass emissions.*

* * * * *

(C) * * * For a unit subject to the provisions of subpart H of this part, which is not required to report emission data on a year-round basis and elects to report only during the ozone season, the ozone season NO_X mass emissions for the unit shall be the sum of the quarterly NO_X mass emissions, as determined under paragraph (c)(4)(ii)(B) of this section, for the second and third calendar quarters of the year, and the second quarter report shall include emissions data only for May and June.

(iii) *CO_2 Mass Emissions.*

(A) * * *

Where: * * *

EF_{CO2} = Either the fuel-based CO_2 emission factor from Table LM–3 of this section or the fuel-and-unit-specific CO_2 emission rate from paragraph (c)(1)(iii) of this section (tons /mmBtu). * * *

* * * * *

(e) * * *

(2) For low mass emissions units or groups of units which use the long term fuel flow methodology under paragraph (c)(3)(ii) of this section and which use one of the methods specified in paragraph (c)(3)(ii)(B)(*2*) of this section to determine fuel usage, the owner or operator shall keep, at the facility, a copy of the standard used and shall keep records, for three years, of all measurements obtained for each quarter using the methodology.

* * * * *

(6) For unmanned facilities, the records required by paragraphs (e)(1), (e)(2) and (e)(4) of this section may be kept at a central location, rather than at the facility.

* * * * *

15. Section 75.20 is amended by:

a. Revising paragraphs (b)(3)(i), (c)(2)(ii), (c)(2)(iii), (c)(4) introductory text, (c)(4)(i) through (iii), (g)(2), (h)(1), (h)(3), (h)(4) introductory text, (h)(4)(i) and (h)(4)(ii);

b. In the first sentence of paragraph (a) by removing the words ‘‘, which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system,’’;

c. In paragraph (a)(3) by revising in the first sentence the words ‘‘section for each continuous emission or opacity monitoring system or component thereof,’’ to read ‘‘section, each’’, by removing the words ‘‘or component thereof’’ in each of the two remaining occurrences of these words, and by adding the word ‘‘conditional’’ before the words ‘‘data validation’’ in the last sentence;

d. In paragraph (a)(4)(iii) by removing each occurrence of the words ‘‘or component thereof’’, by adding the word ‘‘conditional’’ immediately before each occurrence of ‘‘data validation’’, and by removing the words ‘‘, until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests’’ that appear at the end of the second sentence;

e. In paragraph (a)(4)(iv) by removing the words ‘‘or component thereof,’’;

f. In the first sentence of paragraph (a)(5)(i) by removing the words ‘‘or component thereof’’ and by adding the words ‘‘(or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section are used, until a probationary calibration error test is passed following corrective actions in accordance with paragraph (b)(3)(ii) of this section)’’ after the words ‘‘successfully completed’’;

g. In paragraph (b)(2) by removing the word ‘‘not’’ before the words ‘‘required for certification’’;

h. In paragraph (b)(5) by revising the third and fourth sentences;

i. In paragraph (c) introductory text by adding in the third sentence the word ‘‘otherwise’’ before the word ‘‘specified,’’ and the words ‘‘and in sections 6.3.1 and 6.3.2 of appendix A to this part,’’ after the words ‘‘(b)(1), (d), & (e) of this section,’’;

j. Removing the second paragraph designated (c)(1)(v) and paragraph (h)(4)(iii);

k. Adding new paragraphs (c)(2)(iv) and (h)(5);

l. In paragraph (d)(2)(iii) by removing the words ‘‘or SO_2-diluent’’ in the third sentence, by revising the last sentence, and by adding two new sentences at the end of the paragraph;

m. In paragraph (d)(2)(v) by adding the words ‘‘(or 720 hours in any ozone season, for sources that report emission data only during the ozone season, in accordance with § 75.74(c))’’ after the words ‘‘one calendar year’’ in the first sentence and by adding the words ‘‘(or ozone season, as applicable)’’ after the words ‘‘per calendar year’’ in the second sentence;

n. In the third sentence of (d)(2)(vii) by revising the words ‘‘analyzer and specify’’ to read ‘‘analyzer, beginning with the letters ‘‘LK’’ (*e.g.,* ‘‘LK1,’’ ‘‘LK2,’’ etc.) and shall specify’’;

o. Adding a sentence to the end of paragraph (g)(1)(i);

p. In paragraph (g)(5) by adding the words ‘‘(or recertified)’’ after both occurrences of the words ‘‘provisionally certified’’, by adding the words ‘‘or for disapproval of a recertification request’’ and ‘‘or denial of a recertification request’’ after, respectively, the first and second occurrence of the words ‘‘loss of certification’’ in the second sentence, and by removing the word ‘‘either’’ from the second sentence; and

q. In paragraph (h)(2) by revising the reference to ‘‘§ 75.63(a)(1)(iii)’’ to read ‘‘§ 75.63(a)(1)(ii)’’.

The revisions and additions read as follows:

§ 75.20 Initial certification and recertification procedures.

* * * * *

(b) * * *

(3) * * *

(i) The owner or operator shall use substitute data, according to the standard missing data procedures in §§ 75.33 through 75.37 (or shall report emission data using a reference method or another monitoring system that has been certified or approved for use under this part), in the period extending from the hour of the replacement, modification or change made to a monitoring system that triggers the need to perform recertification testing, until either: the hour of successful completion of all of the required recertification tests; or the hour in which a probationary calibration error test (according to paragraph (b)(3)(ii) of this section) is performed and passed, following all necessary repairs, adjustments or reprogramming of the monitoring system. The first hour of quality-assured data for the recertified monitoring system shall either be the hour after all recertification tests have been completed or, if conditional data validation is used, the first quality-assured hour shall be determined in accordance with paragraphs (b)(3)(ii) through (b)(3)(ix) of this section. Notwithstanding these requirements, if the replacement, modification, or change requiring recertification of the CEMS is such that the historical data stream is no longer representative (e.g., where the SO_2 concentration and stack flow rate change significantly after

installation of a wet scrubber), the owner or operator shall substitute for missing data as follows, in lieu of using the standard missing data procedures in §§ 75.33 through 75.37: for a change that results in a significantly higher concentration or flow rate, substitute maximum potential values according to the procedures in paragraph (a)(5) of this section; or for a change that results in a significantly lower concentration or flow rate, substitute data using the standard missing data procedures. The owner or operator shall then use the initial missing data procedures in § 75.31, beginning with the first hour of quality assured data obtained with the recertified monitoring system, unless otherwise provided by § 75.34 for units with add-on emission controls.

* * * * *

(5) * * * In the event that a recertification application is disapproved, data from the monitoring system are invalidated and the applicable missing data procedures in §§ 75.31 or 75.33 shall be used from the date and hour of receipt of the disapproval notice back to the hour of the adjustment or change to the CEMS that triggered the need for recertification testing or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section were used, back to the hour of the probationary calibration error test that began the recertification test period. Data from the monitoring system remain invalid until all required recertification tests have been passed or until a subsequent probationary calibration error test is passed, beginning a new recertification test period. * * *

(c) *Initial certification and recertification procedures.*

* * * * *

(2) * * *

(ii) Relative accuracy test audits, as follows:

(A) A single-load (or single-level) RATA at the normal load (or level), as defined in section 6.5.2.1(d) of appendix A to this part, for a flow monitor installed on a peaking unit or bypass stack, or for a flow monitor exempted from multiple-level RATA testing under section 6.5.2(e) of appendix A to this part;

(B) For all other flow monitors, a RATA at each of the three load levels (or operating levels) corresponding to the three flue gas velocities described in section 6.5.2(a) of appendix A to this part;

(iii) A bias test for the single-load (or single-level) flow RATA described in paragraph (c)(2)(ii)(A) of this section; and

(iv) A bias test (or bias tests) for the 3-level flow RATA described in paragraph (c)(2)(ii)(B) of this section, at the following load or operational level(s):

(A) At each load level designated as normal under section 6.5.2.1(d) of appendix A to this part, for units that produce electrical or thermal output, or

(B) At the operational level identified as normal in section 6.5.2.1(d) of appendix A to this part, for units that do not produce electrical or thermal output.

* * * * *

(4) For each CO_2 pollutant concentration monitor, each CO_2 monitoring system that uses an O_2 monitor to determine CO_2 concentration, and each diluent gas monitor used only to monitor heat input rate:

(i) A 7-day calibration error test;

(ii) A linearity check;

(iii) A relative accuracy test audit, where, for an O_2 monitor used to determine CO_2 concentration, the CO_2 reference method shall be used for the RATA; and

* * * * *

(d) * * *

(2) * * *

(iii) * * * However, if the linearity test is performed within 168 unit or stack operating hours but is either failed or aborted due to a problem with the CEMS or like-kind replacement analyzer, then all of the conditionally valid data are invalidated back to the hour of the probationary calibration error test, and data from the non-redundant backup CEMS or from the primary monitoring system of which the like-kind replacement analyzer is a part remain invalid until the hour of completion of a successful linearity test. Notwithstanding this requirement, the conditionally valid data status may be re-established after a failed or aborted linearity check, if corrective action is taken and a calibration error test is subsequently passed. However, in no case shall the use of conditional data validation extend for more than 168 unit or stack operating hours beyond the date and time of the original probationary calibration error test when the analyzer was brought into service.

* * * * *

(g) * * *

(1) * * *

(i) * * * For orifice, nozzle, and venturi-type flowmeters, the results of primary element visual inspections and/or calibrations of the transmitters or transducers shall also be provided.

* * * * *

(2) *Initial certification, recertification, and QA testing notification.* The designated representative shall provide initial certification testing notification, recertification testing notification, and routine periodic quality-assurance testing, as specified in § 75.61. Initial certification testing notification, recertification testing notification, or periodic quality assurance testing notification is not required for an excepted monitoring system under appendix D to this part.

* * * * *

(h) * * *

(1) *Monitoring plan.* The designated representative shall submit a monitoring plan in accordance with §§ 75.53 and 75.62.

* * * * *

(3) *Approval of certification applications.* The provisions for the certification application formal approval process in the introductory text of paragraph (a)(4) and in paragraphs (a)(4)(i), (ii), and (iv) of this section shall apply, except that ''continuous emission or opacity monitoring system'' shall be replaced with ''low mass emissions excepted methodology.'' Provisional certification status for the low mass emissions methodology begins on the date of submittal (consistent with the definition of ''submit'' in § 72.2 of this chapter) of a complete certification application, and the methodology is considered to be certified either upon receipt of a written approval notice from the Administrator or, if such notice is not provided, at the end of the Administrator's 120-day review period. However, in contrast to CEM systems or appendix D and E monitoring systems, a provisionally certified or certified low mass emissions excepted methodology may not be used to report data under the Acid Rain Program or in a NO_X mass emissions reduction program under subpart H of this part prior to the applicable commencement date specified in § 75.19(a)(2)(i).

(4) *Disapproval of low mass emissions unit certification applications.* If the Administrator determines that the certification application for a low mass emissions unit does not demonstrate that the unit meets the requirements of §§ 75.19(a) and (b), the Administrator shall issue a written notice of disapproval of the certification application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification is invalidated by the Administrator, and any emission data reported using the excepted methodology during the Administrator's 120-day review period shall be considered invalid. The owner or operator shall use the following

procedures when a certification application is disapproved:

(i) The owner or operator shall substitute the following values, as applicable, for each hour of unit operation in which data were reported using the low mass emissions methodology until such time, date, and hour as continuous emission monitoring systems or excepted monitoring systems, where applicable, are installed and provisionally certified: the maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part; the maximum potential fuel flowrate, as defined in section 2.4.2 of appendix D to this part; the maximum potential values of fuel sulfur content, GCV, and density (if applicable) in Table D–6 of appendix D to this part; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter; the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part; or the maximum potential CO_2 concentration as defined in section 2.1.3.1 of appendix A to this part. For a unit subject to a State or federal NO_X mass reduction program where the owner or operator intends to monitor NO_X mass emissions with a NO_X pollutant concentration monitor and a flow monitoring system, substitute for NO_X concentration using the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, and substitute for volumetric flow using the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part; and

(ii) The designated representative shall submit a notification of certification test dates for the required monitoring systems, as specified in § 75.61(a)(1)(i), and shall submit a certification application according to the procedures in paragraph (a)(2) of this section.

(5) *Recertification.* Recertification of an approved low mass emissions excepted methodology is not required. Once the Administrator has approved the methodology for use, the owner or operator is subject to the on-going qualification and disqualification procedures in § 75.19(b), on an annual or ozone season basis, as applicable.

§ 75.21 [Amended].

16. Section 75.21 is amended by:

a. In paragraph (a)(7) by adding the words ''only for infrequent, non-routine operations (e.g.,'' after the words ''higher sulfur fuel(s)'' in the first sentence, and by adding a closing parenthesis after the words ''short-term testing'' in the first sentence;

b. In paragraph (a)(8) by removing the words ''On and after April 1, 2000'' and by capitalizing the initial occurrence of the word ''the'';

c. In paragraph (a)(9) by revising in the first sentence the words ''exempted under paragraphs (a)(6) or (a)(7) of this section from the SO_2 RATA requirements of this part'' to read ''exempted from the SO_2 RATA requirements of this part under paragraphs (a)(6) or (a)(7) of this section''; and

d. In paragraph (e)(2) by revising the word ''another'' to read ''other''.

17. Section 75.22 is amended by:

a. Removing the last sentence of paragraph (a) introductory text;

b. In the last sentence of paragraph (a)(4) by revising the word ''techniques'' to read ''wet bulb-dry bulb technique''; and

c. Adding a sentence to the end of paragraph (a)(5).

The revisions read as follows:

§ 75.22 Reference test methods.

(a) * * *

(5) * * * Alternatively, Method 20 may be used as the reference method for relative accuracy test audits of NO_X CEMS installed on combustion turbines.

* * * * *

18. Section 75.24 is amended by:

a. Revising paragraph (a)(1); and

b. In paragraph (c)(2) by removing the words ''or certified portable monitor or''.

The revisions read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

(a) * * *

(1) For daily calibration error tests, an out-of-control period occurs when the calibration error of a pollutant concentration monitor exceeds the applicable specification in section 2.1.4 of appendix B to this part.

* * * * *

19. Section 75.30 is amended by:

a. In paragraph (a)(6) by revising the period at the end of the paragraph to read ''; or'';

b. Adding new paragraphs (a)(7) and (a)(8);

c. In the first sentence of paragraph (b) by adding the words ''percent moisture,'' after the words ''flow rate,''; and

d. In paragraphs (d)(1) and (d)(2) by removing the words ''§ 75.54(b)(5) or'' and the words ''as applicable,''.

The revisions and additions read as follows:

§ 75.30 General provisions.

(a) * * *

(7) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system or an approved alternative monitoring method under subpart E of this part. This requirement does not apply when a default percent moisture value, as provided in §§ 75.11(b) or 75.12(b), is used to account for the hourly moisture content of the stack gas; or

(8) A valid, quality-assured hour of heat input rate data (in mmBtu/hr) has not been measured and recorded for a unit from a certified flow monitor and a certified diluent (CO_2 or O_2) monitor or by an approved alternative monitoring system under subpart E of this part.

* * * * *

20. Section 75.31 is amended by:

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

b. Revising paragraph (c) heading introductory text, and paragraph (c)(1);

c. Adding a new sentence to the beginning of paragraph (c)(2);

d. In paragraph (c)(3) by adding the words ''(or for non-load-based units using operational bins, when no prior quality-assured data exist in the corresponding operational bin)'' after the words ''higher load range''; and

e. Adding a new paragraph (d).

The revisions and additions read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification of the required SO_2, CO_2, O_2 or moisture monitoring system(s) at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by CEMS(s) installed at that location), and during the first 2,160 quality-assured monitor operating hours following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at the unit or stack location, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section.

* * *

* * * * *

(c) Volumetric flow and NO_X emission rate or NO_X concentration data (load ranges or operational bins used). The procedures in this paragraph apply to affected units for which load-based ranges or non-load-based operational bins, as defined, respectively, in sections 2 and 3 of appendix C to this part are used to provide substitute NO_X and flow rate data. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X

concentration data used to determine NO_X mass emissions:

(1) Whenever prior quality-assured data exist in the load range (or operational bin) corresponding to the operating load (or operating conditions) at the time of the missing data period, the owner or operator shall substitute, by means of the automated data acquisition and handling system, for each hour of missing data, the arithmetic average of all of the prior quality-assured hourly flow rates, NO_X emission rates, or NO_X concentrations in the corresponding load range (or operational bin) as determined using the procedure in appendix C to this part. When non-load-based operational bins are used, if essential operating or parametric data are unavailable for any hour in the missing data period, such that the operational bin cannot be determined, the owner or operator shall, for that hour, substitute (as applicable) the maximum potential flow rate as specified in section 2.1.4.1 of appendix A to this part or the maximum potential NO_X emission rate or the maximum potential NO_X concentration as specified in section 2.1.2.1 of appendix A to this part.

(2) This paragraph (c)(2) does not apply to non-load-based units using operational bins. * * *

* * * * *

(d) *Non-load-based volumetric flow and NO_X emission rate or NO_X concentration data (operational bins not used*). The procedures in this paragraph, (d), apply only to affected units that do not produce electrical output (in megawatts) or thermal output (in klb/hr of steam) and for which operational bins are not used. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever prior quality-assured data exist at the time of the missing data period, the owner or operator shall substitute, by means of the automated data acquisition and handling system, for each hour of missing data, the arithmetic average of all of the prior quality-assured hourly average flow rates or NO_X emission rates or NO_X concentrations.

(2) Whenever no prior quality-assured flow rate, NO_X emission rate, or NO_X concentration data exist, the owner or operator shall, as applicable, substitute for each hour of missing data, the maximum potential flow rate as specified in section 2.1.4.1 of appendix A to this part or the maximum potential NO_X emission rate or the maximum potential NO_X concentration as specified in section 2.1.2.1 of appendix A to this part.

21. Section 75.32 is amended by:

a. Revising paragraph (a) introductory text and paragraph (a)(2) (except for Equation 9);

b. In paragraph (a)(1) by adding the words ''or stack'' after the word ''unit'' and revising the word ''equation'' to read ''Equation''; and

c. In paragraph (a)(3) by revising the first three sentences.

The revisions and additions read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification of the required SO_2, CO_2, O_2 or moisture monitoring system(s) at a particular unit or stack location (*i.e.,* the date and time at which quality assured data begins to be recorded by CEMS(s) at that location), the owner or operator shall begin calculating the percent monitor data availability as described in paragraph (a)(1) of this section, and shall, upon completion of the first 720 quality-assured monitor operating hours, record, by means of the automated data acquisition and handling system, the percent monitor data availability for each monitored parameter. Similarly, following initial certification of the required NO_X-diluent, NO_X concentration, or flow monitoring system(s) at a unit or stack location, the owner or operator shall begin calculating the percent monitor data availability as described in paragraph (a)(1) of this section, and shall, upon completion of the first 2,160 quality-assured monitor operating hours, record, by means of the automated data acquisition and handling system, the percent monitor data availability for each monitored parameter. Notwithstanding these requirements, if three years (26,280 clock hours) have elapsed since the date and hour of initial certification and fewer than 720 (or 2,160, as applicable) quality-assured monitor operating hours have been recorded, the owner or operator shall begin recording the percent monitor data availability. The percent monitor data availability shall be calculated for each monitored parameter at each unit or stack location, as follows:

* * * * *

(2) Upon completion of 8,760 unit (or stack) operating hours following initial certification and thereafter, the owner or operator shall, for the purpose of applying the standard missing data procedures of § 75.33, use Equation 9 to calculate hourly, percent monitor data availability. Notwithstanding this requirement, if three years (26,280 clock hours) have elapsed since initial certification and fewer than 8,760 unit or stack operating hours have been accumulated, the owner or operator shall begin using a modified version of Equation 9, as described in paragraph (a)(3) of this section.

* * * * *

(3) When calculating percent monitor data availability using Equation 8 or 9, the owner or operator shall include all unit operating hours, and all monitor operating hours for which quality-assured data were recorded by a certified primary monitor; a certified redundant or non-redundant backup monitor or a reference method for that unit; or by an approved alternative monitoring system under subpart E of this part. No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 9. For a unit that has accumulated fewer than 8,760 unit operating hours in the previous three years (26,280 clock hours), replace the words ''during previous 8,760 unit operating hours'' in the numerator of Equation 9 with ''in the previous three years'' and replace ''8,760'' in the denominator of Equation 9 with ''total unit operating hours in the previous three years.'' * * *

* * * * *

22. Section 75.33 is amended by:

a. Revising paragraph (a), removing Tables 1 and 2 after paragraph (a), and revising paragraph (c) introductory text;

b. Adding paragraphs (b)(5), (b)(6), (b)(7), (c)(7), (c)(8), (c)(9), (d), and (e), including new Tables 3 and 4;

c. In paragraph (c)(1) introductory text and paragraph (c)(2) introductory text by removing the words ''or continuous emission monitoring system'';

d. In paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(2)(i), (c)(2)(ii)(A), and (c)(3) by adding the words ''or operational bin'' after each occurrence of the words ''unit load range'';

e. In paragraph (c)(3) by removing the words ''section 2 of'';

f. In paragraph (c)(4) by adding a sentence to the end of the paragraph;

g. In paragraph (c)(5) by adding a new first sentence; and

h. In paragraph (c)(6) by revising the words ''for either the corresponding load range or a higher load range'' to read ''at either the corresponding load range (or a higher load range) or at the corresponding operational bin''.

The revisions and additions read as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X and flow rate.

(a) Following initial certification of the required SO_2, NO_X, and flow rate monitoring system(s) at a particular unit

or stack location (i.e., the date and time at which quality assured data begins to be recorded by CEMS(s) at that location) and upon completion of the first 720 quality-assured monitor operating hours (for SO_2) or the first 2,160 quality assured monitor operating hours (for flow, NO_X emission rate, or NO_X concentration), the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section and depicted in Table 1 (SO_2) and Table 2 of this section (NO_X, flow). The owner or operator may either implement the provisions of paragraphs (b) and (c) of this section on a non-fuel-specific basis, or may, as described in paragraphs (b)(5), (b)(6), (c)(7) and (c)(8) of this section, provide fuel-specific substitute data values. Notwithstanding these requirements, if three years (26,280 clock hours) have elapsed since the date and hour of initial certification, and fewer than 720 (or 2,160, as applicable) quality assured monitor operating hours have been recorded, the owner or operator shall begin using the missing data procedures of this section. The owner or operator of a unit shall substitute for missing data using quality-assured monitor operating hours of data from no earlier than three years (26,280 clock hours) prior to the date and time of the missing data period.

(b) * * *

(5) For units that combust more than one type of fuel, the owner or operator may opt to implement the missing data routines in paragraphs (b)(1) through (b)(4) of this section on a fuel-specific basis. If this option is selected, the owner or operator shall document this in the monitoring plan required under § 75.53.

(6) Use the following guidelines to implement paragraphs (b)(1) through (b)(4) of this section on a fuel-specific basis:

(i) Separate the historical, quality-assured SO_2 concentration data according to the type of fuel combusted;

(ii) For units that co-fire different types of fuel, either group the co-fired hours with the historical data for the fuel with the highest SO_2 emission rate (e.g., if diesel oil and pipeline natural gas are co-fired, count co-fired hours as oil-burning hours), or separate the co-fired hours from the single-fuel hours;

(iii) For the purposes of providing substitute data under paragraph (b)(4) of this section, determine a separate, fuel-specific maximum potential SO_2 concentration (MPC) value for each type of fuel combusted in the unit, in a manner consistent with section 2.1.1.1 of appendix A to this part. For fuel that qualifies as pipeline natural gas or natural gas (as defined in § 72.2 of this chapter), the owner or operator shall, for the purposes of determining the MPC, either determine the maximum total sulfur content and minimum gross calorific value (GCV) of the gas by fuel sampling and analysis or shall use a default total sulfur content of 0.05 percent by weight (dry basis) and a default GCV value of 950 Btu/scf. For co-firing, the MPC value shall be based on the fuel with the highest SO_2 emission rate. The exact methodology used to determine each fuel-specific MPC value shall be documented in the monitoring plan for the unit or stack; and

(iv) For missing data periods that require 720-hour (or, if applicable, 3-year) lookbacks, use historical data for the type of fuel combusted during each hour of the missing data period to determine the appropriate substitute data value for that hour. For co-fired missing data hours, if the historical data are separated into single-fuel and co-fired hours, use co-fired data to provide the substitute data values. Otherwise, use data for the fuel with the highest SO_2 emission rate to provide substitute data values for co-fired missing data hours.

(7) Table 1 summarizes the provisions of paragraphs (b)(1) through (b)(6) of this section.

(c) *Volumetric flow rate, NO_X emission rate and NO_X concentration data.* Use the procedures in this paragraph to provide substitute NO_X and flow rate data for all affected units for which load-based ranges have been defined in accordance with section 2 of appendix C to this part. For units that do not produce electrical or thermal output (i.e., non-load-based units), use the procedures in this paragraph only to provide substitute data for volumetric flow rate, and only if operational bins have been defined for the unit, as described in section 3 of appendix C to this part. Otherwise, use the applicable missing data procedures in paragraph (d) or (e) of this section for non-load-based units. For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

* * * * *

(4) * * * In addition, when non-load-based operational bins are used, the owner or operator shall substitute the maximum potential flow rate for any hour in the missing data period in which essential operating or parametric data are unavailable and the operational bin cannot be determined.

(5) This paragraph, (c)(5), does not apply to non-load-based, affected units using operational bins. * * *

* * * * *

(7) This paragraph (c)(7) does not apply to affected units using non-load-based operational bins. For units that combust more than one type of fuel, the owner or operator may opt to implement the missing data routines in paragraphs (c)(1) through (c)(6) of this section on a fuel-specific basis. If this option is selected, the owner or operator shall document this in the monitoring plan required under

(8) This paragraph, (c)(8), does not apply to affected units using non-load-based operational bins. Use the following guidelines to implement paragraphs (c)(1) through (c)(6) of this section on a fuel-specific basis:

(i) Separate the historical, quality-assured NO_X emission rate, NO_X concentration, or flow rate data according to the type of fuel combusted;

(ii) For units that co-fire different types of fuel, either group the co-fired hours with the historical data for the fuel with the highest NO_X emission rate, NO_X concentration or flow rate, or separate the co-fired hours from the single-fuel hours;

(iii) For the purposes of providing substitute data under paragraph (c)(4) of this section, a separate, fuel-specific maximum potential concentration (MPC), maximum potential NO_X emission rate (MER), or maximum potential flow rate (MPF) value (as applicable) shall be determined for each type of fuel combusted in the unit, in a manner consistent with § 72.2 of this chapter and with section 2.1.2.1 or 2.1.4.1 of appendix A to this part. For co-firing, the MPC, MER or MPF value shall be based on the fuel with the highest emission rate or flow rate (as applicable). The exact methodology used to determine each fuel-specific MPC, MER or MPF value shall be documented in the monitoring plan for the unit or stack.

(iv) For missing data periods that require 2,160-hour (or, if applicable, 3-year) lookbacks, use historical data for the type of fuel combusted during each hour of the missing data period to determine the appropriate substitute data value for that hour. For co-fired missing data hours, if the historical data are separated into single-fuel and co-fired hours, use co-fired data to provide the substitute data values. Otherwise, use data for the fuel with the highest NO_X emission rate, NO_X concentration or flow rate (as applicable) to provide substitute data values for co-fired missing data hours. Tables 1 and 2 follow.

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more	N ≤ 24	Average	HB/HA.
	N > 24	For SO_2, CO_2, and H_2O**, the greater of:.	
		Average	HB/HA.
		90th percentile	720 hours*.
		For O_2 and H_2O^x , the lesser of:.	
		Average	HB/HA.
		10th percentile	720 hours*.
90 or more, but below 95	N ≤ 8	Average	HB/HA.
	N > 8	For SO_2, CO_2, and H_2O**, the greater of:.	
		Average	HB/HA.
		95th percentile	720 hours*.
		For O_2 and H_2O^x, the lesser of:.	
		Average	HB/HA.
		5th percentile	720 hours*.
80 or more, but below 90	N > 0	For SO_2, CO_2, and H_2O**,.	
		Maximum value [1]	720 hours*.
		For O_2 and H_2O^x:.	
		Minimum value [1]	720 hours*.
Below 80	N > 0	Maximum potential concentration or % (for SO_2, CO_2, and H_2O**) *or*.	
		Minimum potential concentration or % (for O_2 and H_2Ox).	None.

HB/HA = hour before and hour after the CEMS outage.

*Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years prior to the missing data period.

[1] Where a unit with add-on SO_2 emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours.

[2] During unit operating hours.

[x] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

**Use this algorithm for moisture only when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

TABLE 2.—LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS, NO_X CONCENTRATION CEMS AND FLOW RATE CEMS

Trigger conditions		Calculation routines		
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period	Load ranges
95 or more	N ≤ 24	Average	2160 hours*	Yes.
	N > 24	The greater of:.		
		Average	HB/HA	No.
		90th percentile	2160. hours*	Yes.
90 or more, but below 95	N ≤ 8	Average	2160 hours*	Yes.
	N>8	The greater of.		
		Average	HB/HA	No
		95th percentile	2160 hours*	Yes.
80 or more, but below 90	N > 0	Maximum value [1]	2160 hours*	Yes.
Below 80	N > 0	Maximum NO_X emission rate; or maximum potential NO_X NO_X concentration; or maximum potential flow rate.	None	No.

HB/HA = hour before and hour after the CEMS outage.

*• Quality-assured, monitor operating hours, using data at the corresponding load range (''load bin'') for each hour of the missing data period. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years prior to the missing data period.

[1] Where a unit with add-on NO_X emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours. Alternatively, units with add-on controls that report NO_X mass emissions on a year-round basis under subpart H of this part may use separate ozone season and non-ozone season databases to provide substitute data values, as described in § 75.34(a)(2).

[2] During unit operating hours.

(9) The load-based provisions of paragraphs (c)(1) through (c)(8) of this section are summarized in Table 2 of this section. The non-load-based provisions for volumetric flow rate, found in paragraphs (c)(1) through (c)(4), and (c)(6) of this section, are presented in Table 4 of this section.

(d) *Non-load-based* NO_x emission rate and NO_X *concentration data.* Use the procedures in this paragraph to provide substitute NO_X data for affected units that do not produce electrical output (in megawatts) or thermal output (in klb/hr of steam). For each hour of missing NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever the monitor data availability is equal to or greater than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period less than or equal to 24 hours, substitute, as applicable, for each missing hour, the arithmetic average of the NO_X emission rates or NO_X concentrations recorded by a monitoring system in a 2,160 hour lookback period. The lookback period may be comprised of either:

(A) The previous 2,160 quality assured monitor operating hours, or

(B) The previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins, as defined in section 3 of appendix C to this part, are used.

(ii) For a missing data period greater than 24 hours, substitute, for each missing hour, the 90th percentile NO_X emission rate or the 90th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(2) Whenever the monitor data availability is at least 90.0 percent but less than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period of less than or equal to eight hours, substitute, as applicable, the arithmetic average of the hourly NO_X emission rates or NO_X concentrations recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(ii) For a missing data period greater than eight hours, substitute, for each missing hour, the 95th percentile hourly flow rate or the 95th percentile NO_X emission rate or the 95th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(3) Whenever the monitor data availability is at least 80.0 percent but less than 90.0 percent, the owner or operator shall, by means of the automated data acquisition and handling system, substitute, as applicable, for each hour of each missing data period, the maximum hourly NO_X emission rate or the maximum hourly NO_X concentration recorded during the previous 2,160 quality-assured monitor operating hours (or during the previous 2,160 quality-assured monitor operating hours at the corresponding operational bin, if operational bins are used).

(4) Whenever the monitor data availability is less than 80.0 percent, the owner or operator shall substitute, as applicable, for each hour of each missing data period, the maximum NO_X emission rate, as defined in § 72.2 of this chapter, or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part. In addition, when operational bins are used, the owner or operator shall substitute (as applicable) the maximum potential NO_X emission rate or the maximum potential NO_X concentration for any hour in the missing data period in which essential operating or parametric data are unavailable and the operational bin cannot be determined.

(5) If operational bins are used and no prior quality-assured NO_X concentration data or NO_X emission rate data exist for the corresponding operational bin, the owner or operator shall substitute, as applicable, either the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part.

(6) Table 3 of this section summarizes the provisions of paragraphs (d)(1) through (d)(5) of this section.

(e) *Non-load-based volumetric flow rate data.* (1) If operational bins, as defined in section 3 of appendix C to this part, are used for a unit that does not produce electrical or thermal output, use the missing data procedures in paragraph (c) of this section to provide substitute volumetric flow rate data for the unit.

(2) If operational bins are not used, modify the procedures in paragraph (c) of this section as follows:

(i) In paragraphs (c)(1) through (c)(3), the words ''previous 2,160 quality-assured monitor operating hours'' shall apply rather than ''previous 2,160 quality-assured monitor operating hours at the corresponding unit load range or operational bin, as determined using the procedure in appendix C to this part;''

(ii) The last sentence in paragraph (c)(4) does not apply;

(iii) Paragraphs (c)(5), (c)(7), and (c)(8) are not applicable; and

(iv) In paragraph (c)(6), the words, ''for either the corresponding load range (or a higher load range) or at the corresponding operational bin'' do not apply.

(3) Table 4 of this section summarizes the provisions of paragraphs (e)(1) and (e)(2) of this section. Tables 3 and 4 follow:

TABLE 3.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS AND NO_X CONCENTRATION CEMS

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours)[1]	Method	Lookback period
95 or more	N ≤ 24	Average	2160 hours*
	N > 24	90th percentile	2160 hours*
90 or more, but below 95	N ≤ 8	Average	2160 hours*
	N > 8	95th percentile	2160 hours*

TABLE 3.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR NO_X-DILUENT CEMS AND NO_X CONCENTRATION CEMS—Continued

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours)[1]	Method	Lookback period
80 or more, but below 90	N > 0	Maximum value	2160 hours*
Below 80, or operational bin indeterminable.	N > 0	Maximum NO_X emission rate or maximum potential NO_X concentration	None

*If operational bins are used, the lookback period is 2,160 quality-assured, monitor operating hours, and data at the corresponding operational bin are used to provide substitute data values. If operational bins are not used, the lookback period is the previous 2,160 quality-assured monitor operating hours. For units that report data only for the ozone season, include only quality-assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years prior to the missing data period.

[1]During unit operation.

TABLE 4.—NON-LOAD-BASED MISSING DATA PROCEDURE FOR FLOW RATE CEMS

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours)[1]	Method	Lookback period
95 or more	N ≤ 24	Average	2160 hours*
	N > 24	The greater of:	
		Average	HB/HA
		90th percentile	2160 hours*
90 or more, but below 95	N ≤ 8	Average	2160 hours*
	N > 8	The greater of:	
		Average	HB/HA
		95th percentile	2160 hours*
80 or more, but below 90	N > 0	Maximum value	2160 hours*
Below 80, or operational bin indeterminable.	N > 0	Maximum potential flow rate	None

• If operational bins are used, the lookback period is the previous 2,160 quality-assured, monitor operating hours and data at the corresponding operational bin are used to provide substitute data values. If operational bins are not used, the lookback period is the previous 2,160 quality-assured, monitor operating hours. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than three years prior to the missing data period.

[1] During unit operation.

23. Section 75.34 is amended by:

a. Revising paragraph (a) introductory text, and paragraphs (a)(1) and (d);

b. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively;

c. Adding a new paragraph (a)(2);

d. In the second sentence of newly redesignated paragraph (a)(4) by removing the words ''§ 75.55(b) or'' and '', as applicable''; and

e. In paragraph (c) by revising the word ''NO_X2'' to read ''NO_X''.

The revisions and additions read as follows:

§ 75.34 Units with add-on emission controls.

(a) The owner or operator of an affected unit equipped with add-on SO_2 and/or NO_X emission controls shall use one of the options in paragraphs (a)(1), (a)(2) or (a)(4) of this section for each hour in which quality-assured data from the outlet SO_2 and/or NO_X monitoring system(s) are not obtained, and shall document which option is selected in the monitoring plan required under § 75.53. If the option in paragraph (a)(1) or (a)(2) is selected, the owner or operator may also use the petition provision in paragraph (a)(3) of this section.

(1) The owner or operator may use the missing data substitution procedures specified in §§ 75.31 through 75.33 to provide substitute data for any missing data hour(s) in which the add-on emission controls are documented to be operating properly, as described in the quality assurance/quality control program for the unit, required by section 1 in appendix B of this part. To provide the necessary documentation, the owner or operator shall, for each missing data period, record parametric data to verify the proper operation of the SO_2 or NO_X add-on emission controls during each hour, as described in paragraph (d) of this section. For any missing data hour(s) in which such parametric data are either not provided or, if provided, do not demonstrate that proper operation of the SO_2 or NO_X add-on emission controls has been maintained, the owner or operator shall substitute (as applicable) the maximum potential NO_X concentration (MPC) as defined in section 2.1.2.1 of appendix A to this part, the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, or the maximum potential concentration for SO_2, as defined by section 2.1.1.1. Alternatively, for SO_2 or NO_X, the owner or operator may substitute, if available, the hourly SO_2 or NO_X concentration recorded by a certified inlet monitor, in lieu of the MPC. For each hour in which data from an inlet monitor are reported, the owner or operator shall use a method of determination code (MODC) of ''22'' (see Table 4a in § 75.57). In addition, under § 75.64(c), the designated representative shall submit as part of each electronic quarterly report, a

certification statement, verifying the proper operation of the SO_2 or NO_X add-on emission control for each missing data period in which the missing data procedures of §§ 75.31 through 75.33 were applied; or

(2) This paragraph, (a)(2), applies only to a unit which, as provided in § 75.74(a) or § 75.74(b)(1), reports NO_X mass emissions on a year-round basis under a state or Federal NO_X mass emissions reduction program that adopts the emissions monitoring provisions of this part. If the add-on NO_X emission controls installed on such a unit are operated only during the ozone season or are operated in a more efficient manner during the ozone season than outside the ozone season, the owner or operator may implement the missing data provisions of paragraph (a)(1) of this section in the following alternative manner:

(i) The historical, quality-assured NO_X emission rate or NO_X concentration data may be separated into two categories, i.e., data recorded inside the ozone season and data recorded outside the ozone season;

(ii) For the purposes of the missing data lookback periods described under §§ 75.33(c)(1), (c)(2) and (c)(3), the substitute data values shall be taken from the appropriate database, depending on the date(s) and hour(s) of the missing data period. That is, if the missing data period occurs inside the ozone season, the ozone season data shall be used to provide substitute data. If the missing data period occurs outside the ozone season, data from outside the ozone season shall be used to provide substitute data.

(iii) A missing data period that begins outside the ozone season and continues into the ozone season shall be considered to be two separate missing data periods, one ending on April 30, hour 23, and the other beginning on May 1, hour 00;

(iv) For missing data hours outside the ozone season, the procedures of § 75.33 may be applied unconditionally, i.e, documentation of the operational status of the emission controls is not required in order to apply the standard missing data routines.

* * * * *

(d) In order to implement the options in paragraphs (a)(1) and (a)(3) of this section, the owner or operator shall keep records of information as described in § 75.58(b)(3) to verify the proper operation of all add-on SO_2 or NO_X emission controls, during all periods of SO_2 or NO_X emission missing data. If the owner or operator elects to implement the missing data option in paragraph (a)(2) of this section, the records in § 75.58(b)(3) are required to be kept only for the ozone season. The owner or operator shall document in the quality assurance/quality control (QA/QC) program required by section 1 of appendix B to this part, the parameters monitored and (as applicable) the ranges and combinations of parameters that indicate proper operation of the controls. The owner or operator shall provide the information recorded under § 75.58(b)(3) and the related QA/QC program information to the Administrator, to the EPA Regional Office, or to the appropriate State or local agency, upon request.

24. Section 75.35 is revised to read as follows:

§ 75.35 Missing data procedures for CO_2.

(a) The owner or operator of a unit with a CO_2 continuous emission monitoring system for determining CO_2 mass emissions in accordance with § 75.10 (or an O_2 monitor that is used to determine CO_2 concentration in accordance with appendix F to this part) shall substitute for missing CO_2 pollutant concentration data using the procedures of paragraphs (b) and (d) of this section.

(b) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by a CEMS at that location), or (when implementing these procedures for a previously certified CO_2 monitoring system) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 pollutant concentration data or substitute CO_2 data for heat input determination, as applicable, according to the procedures in § 75.31(b).

(c) [Reserved]

(d) Upon completion of 720 quality assured monitor operating hours using the initial missing data procedures of § 75.31(b), the owner or operator shall provide substitute data for CO_2 concentration or substitute CO_2 data for heat input determination, as applicable, in accordance with the procedures in § 75.33(b) except that the term ''CO_2 concentration'' shall apply rather than ''SO_2 concentration,'' the term ''CO_2 pollutant concentration monitor'' or ''CO_2 diluent monitor'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration.''

25. Section 75.36 is amended by:

a. Revising the section heading;

b. In paragraph (a) by adding the word ''rate'' after the words ''hourly heat input'' in the first sentence, by adding the word ''rate'' after the words ''heat input'' in the second and third sentences, by removing the words ''On and after April 1, 2000'' in the third sentence and capitalizing ''When'' to begin that sentence, and by removing the final sentence;

c. Revising paragraph (b);

d. Removing and reserving paragraph (c); and

e. In paragraph (d) by adding the word ''rate'' after each occurrence of the word ''input''.

The revisions and additions read as follows:

§ 75.36 Missing data procedures for heat input rate determinations.

* * * * *

(b) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (*i.e.,* the date and time at which quality assured data begins to be recorded by a CEMS at that location), or (when implementing these procedures for a previously certified CO_2 or O_2 monitor) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 or O_2 data, as applicable, for the calculation of heat input (under section 5.2 of appendix F to this part) according to § 75.31(b).

(c) [Reserved]

* * * * *

26. Section 75.37 is amended by:

a. In paragraph (a) by revising the words ''On and after April 1, 2000, the'' to read ''The'' and by removing the second sentence;

b. Revising paragraphs (c) and (d)(2)(i); and

c. In paragraph (d) introductory text by removing the words ''of the moisture monitoring system''.

The revisions and additions read as follows:

§ 75.37 Missing data procedures for moisture.

* * * * *

(c) During the first 720 quality assured monitor operating hours following initial certification at a particular unit or stack location (i.e., the date and time at which quality assured data begins to be recorded by a moisture monitoring

system at that location), the owner or operator shall provide substitute data for moisture according to § 75.31(b).

(d) * * *

(2) * * *

(i) Provided that none of the following equations is used to determine SO_2 emissions, CO_2 emissions or heat input: Equation F–2, F–14b, F–16, F–17, or F–18 in appendix F to this part, or Equation 19–5 or 19–9 in Method 19 in appendix A to part 60 of this chapter, use the missing data procedures in § 75.33(b), except that the term ''moisture percentage'' shall apply rather than ''SO_2 concentration,'' the term ''moisture monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration;'' or

* * * * *

27. Section 75.41 is amended by:

a. In paragraph (b)(2)(v)(B) by adding the words ''(Eq. 22)'' immediately before ''where''; and

b. By revising Equation 27 in paragraph (c)(2)(ii).

The revisions and additions read as follows:

§ 75.41 Precision criteria.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

$$r = \frac{\sum e_p e_v - \left(\sum e_p\right)\left(\sum e_v\right)/n}{\left(\left[\sum e_p^2 - \left(\sum e_p\right)^2/n\right]\left[\sum e_v^2 - \left(\sum e_v\right)^2/n\right]\right)^{(1/2)}} \qquad \text{(Eq. 27)}$$

* * * * *

28. Section 75.53 is amended by:

a. Removing and reserving paragraphs (c) and (d);

b. Revising paragraphs (a)(1), (e)(1)(viii), and (f)(1)(i)(F);

c. In paragraph (b) by adding the words '', by the applicable deadline specified in § 75.62 or elsewhere in this part'' prior to the period at the end of the paragraph;

d. In paragraph (e)(1)(i) introductory text by adding the words ''(or equivalent facility ID number assigned by EPA, if the facility does not have an ORISPL number)'' after the words ''Data Base'';

e. In paragraph (e)(1)(i)(D) by adding the words ''/emergency/startup'' after the words ''primary/secondary'';

f. In paragraph (e)(1)(i)(E) by adding the words ''primary/secondary controls indicator;'' after the words ''(if applicable);'';

g. In paragraph (e)(1)(ix) by revising the words ''Part 75 monitoring'' to read ''Monitoring'' and by revising the words ''reporting year, and 767 reporting indicator'' to read ''ARP/Subpart H facility ID number or ORISPL number (as applicable), reporting year, and 767 reporting indicator (or equivalent)'';

h. In paragraph (e)(1)(xii) introductory text by revising the words ''For each unit or common stack (except for peaking units)'' to read ''Unless otherwise specified in section 6.5.2.1 of appendix A to this part, for each unit or common stack'';

i. In paragraph (e)(1)(xii)(A) and (B) by adding the words '', or ft/sec (as applicable)'' to the end of each paragraph, and by adding a comma after ''megawatts'' in each paragraph;

j. In paragraph (e)(1)(xii)(D) by revising the first occurrence of the word ''load'' to read ''data'' and by adding the words ''(or operating)'' after each other occurrence of the word ''load'' and in paragraphs (e)(1)(xii)(B), (C), and (E) by adding the words ''or operating'' after each occurence of the word ''load'';

k. In paragraph (f)(2)(i)(F) by adding the word ''rate'' after the word ''input'' and the word ''emission'' after the word ''NO_X'';

l. In paragraph (f)(2)(i)(H) by adding the words ''or ozone season'' after the word ''year'' and by revising the word ''part'' to read ''chapter'';

m. In paragraph (f)(5) introductory text by adding the words ''that accompanies the initial certification application'' to the end of the paragraph;

n. In paragraph (f)(5)(i) by revising the second sentence and by adding a third sentence and new paragraphs (f)(5)(i)(A) through (F);

o. In paragraph (f)(5)(ii)(C) by revising the words ''natural gas or'' to read ''gaseous fuel(s) and/or'' in two occurrences: and

p. In paragraph (f)(5)(ii)(E) by adding the words '', estimated'' after the word ''actual''.

The revisions and additions read as follows:

§ 75.53 Monitoring plan.

(a) * * *

(1) The owner or operator shall meet the requirements of paragraphs (a), (b), (e), and (f) of this section.

(c) [Reserved]

(d) [Reserved]

(e) * * *

(1) * * *

(viii) Stack exit height (ft) above ground level and ground level elevation above sea level.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) The method used to demonstrate that the unit qualifies for monthly GCV sampling or for daily or annual fuel sampling for sulfur content, as applicable.

* * * * *

(5) * * *

(i) * * * This report will include either the previous three years actual or projected emissions. The following items should be included:

(A) Current calendar year of application;

(B) Type of qualification;

(C) Years one, two, and three;

(D) Annual or ozone season measured, estimated or projected NO_X mass emissions for years one, two, and three;

(E) Annual measured, estimated or projected SO_2 mass emissions for years one, two, and three; and

(F) Annual or ozone season operating hours for years one, two, and three.

* * * * *

§ 75.54 [Reserved]

29. Section 75.54 is removed and reserved.

§ 75.55 [Reserved]

30. Section 75.55 is removed and reserved.

§ 75.56 [Reserved]

31. Section 75.56 is removed and reserved.

32. Section 75.57 is amended by:

a. Revising the introductory paragraph;

b. In paragraph (a)(3) by removing the words ''§ 75.55 or'' and ''as applicable,'';

c. In paragraph (a)(4) by removing both occurrences of the words ''§ 75.56 or'';

d. Revising Table 4a at the end of paragraph (c)(4)(iv);

e. Amending paragraph (d)(6) and (d)(7) by removing the words ''either'',

''hundredth or'', and ''prior to April 1, 2000 and rounded to the nearest thousandth on and after April 1, 2000''.

The revisions read as follows:

§ 75.57 General recordkeeping provisions.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

* * * * *

(c) * * *

(4) * * *

TABLE 4A.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified backup emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: SO_2: Method 6C. Flow: Method 2 or its allowable alternatives under appendix A to part 60 of this chapter. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, O_2 concentrations, NO_X concentrations, flow rates, moisture percentages or NO_X emission rates for the hour before and the hour following a missing data period.
7	Initial missing data procedures used. Either: (a) the average of the hourly SO_2 concentration, CO_2 concentration, O_2 concentration, or moisture percentage for the hour before and the hour following a missing data period; or (b) the arithmetic average of all NO_X concentration, NO_X emission rate, or flow rate values at the corresponding load range (or a higher load range), or at the corresponding operational bin (non-load-based units, only); or (c) the arithmetic average of all previous NO_X concentration, NO_X emission rate, or flow rate values (non-load- based units, only).
8	90th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 10th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
9	95th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 5th percentile hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
10	Maximum hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or minimum hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
11	Average of hourly flow rates, NO_X concentrations or NO_X emission rates in corresponding load range, for the applicable lookback period. For non-load-based units, report either the average flow rate, NO_X concentration or NO_X emission rate in the applicable lookback period, or the average flow rate or NO_X value at the corresponding operational bin (if operational bins are used).
12	Maximum potential concentration of SO_2, maximum potential concentration of CO_2, maximum potential concentration of NO_X maximum potential flow rate, maximum potential NO_X emission rate, maximum potential moisture percentage, minimum potential O_2 concentration or minimum potential moisture percentage, as determined using § 72.2 of this chapter and section 2.1 of appendix A to this part (moisture missing data algorithm depends on which equations are used for emissions and heat input).
13	[Reserved]
14	Diluent cap value (if the cap is replacing a CO_2 measurement, use 5.0 percent for boilers and 1.0 percent for turbines; if it is replacing an O_2 measurement, use 14.0 percent for boilers and 19.0 percent for turbines).
15	[Reserved]
16	SO_2 concentration value of 2.0 ppm during hours when only ''very low sulfur fuel'', as defined in § 72.2 of this chapter, is combusted.
17	Like-kind replacement non-redundant backup analyzer.
19	200 percent of the MPC; default high range value.
20	200 percent of the full-scale range setting (full-scale exceedance of high range).
21	Negative hourly SO_2 concentration, NO_X concentration, percent moisture, or NO_X emission rate replaced with zero.
22	Hourly average SO_2 or NO_X concentration, measured by a certified monitor at the control device inlet (units with add-on emission controls only).
23	Maximum potential SO_2 concentration, NO_X concentration, CO_2 concentration, NO_X emission rate or flow rate, *or* minimum potential O_2 concentration or moisture percentage, for an hour in which flue gases are discharged through an unmonitored bypass stack.
25	Maximum potential NO_X emission rate (MER). (Use only when a NO_X concentration full-scale exceedance occurs and the diluent monitor is unavailable.)
54	Other quality assured methodologies approved through petition. These hours are included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.
55	Other substitute data approved through petition. These hours are not included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.

* * * * *

33. Section 75.58 is amended by:

a. Revising the introductory paragraph;

b. In paragraphs (b)(1)(i) and (c) introductory text by removing the words ''§ 75.54(c) or'';

c. In paragraph (b)(1)(xi) and (b)(2)(vii) by removing the words ''Codes 1–15 in Table 4 of § 75.54 or'';

d. Revising paragraph (b)(3) introductory text;

e. In paragraph (b)(3)(i) by adding the words '', for each hour of missing SO_2 or NO_X emission data,'' after the word ''demonstrate'';

f. In paragraph (b)(3)(ii) by adding the words '', for each hour of missing SO_2 or NO_X emission data,'' after the word ''indicating'';

g. In paragraphs (b)(3)(iii) and (b)(3)(iv) by revising the reference to ''§ 75.34(a)(2)'' to read ''§ 75.34(a)(3)'';

h. Adding a period to the end of paragraph (c)(7)(ii);

i. In paragraph (d) introductory text by removing the words ''paragraph § 75.54(d) or'';

j. In paragraph (e)(1) by removing the words ''§§ 75.54(c)(1) and (c)(3) or'';

k. In paragraph (f) introductory text by removing the words ''§§ 75.54(b) through (e) or''; and

l. In paragraph (f)(1)(iii) by adding the words ''other gaseous fuel,'' after the words ''natural gas,''.

The revisions read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

* * * * *

(b) * * *

(3) Except as otherwise provided in § 75.34(d), for units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1), (a)(2) or (a)(3), the owner or operator shall record:

* * * * *

34. Section 75.59 is amended by:

a. Revising the introductory paragraph;

b. In paragraph (a)(1)(vii), by revising ''Calibration'' to read ''Reference signal or calibration'';

c. In paragraph (a)(5)(ii)(E) by removing both occurrences of the word ''load'' and by adding the word ''operating'' before the word ''levels'';

d. In paragraph (a)(5)(ii)(F) by adding the words ''(or operating level)'' before the word ''indicator'';

e. In paragraph (a)(5)(ii)(L) by adding the words '', except for units that do not produce electrical or thermal output'' after the words ''lb/hr)'';

f. In paragraph (a)(5)(iii)(E) by adding the words ''(or operating)'' before both of the two occurrences of the word ''level'' and by adding the words '', or as otherwise specified by the Administrator, for units that do not produce electrical or thermal output'' after the words ''lb/hr'';

g. In the second sentence of paragraph (a)(7) by adding the words ''of this section'' after the words ''through (a)(7)(vi)'';

h. In paragraph (a)(7)(ii)(A) by removing the word ''load'';

i. Revising paragraphs (a)(7)(ii)(P) and (a)(7)(iii)(F);

j. In paragraph (a)(10)(i)(E) by revising the reference to ''(a)(7)(iii)(A)'' to read ''(a)(7)(iii)'';

k. In paragraph (a)(12)(v) introductory text by adding the words ''(or single-level)'' before the word ''flow'';

l. In paragraphs (a)(12)(v)(C) and (E) by adding the words ''(or operating)'' before the word ''level'', and by, in paragraph (C), removing the period at the end of the paragraph and adding a semicolon in its place;

m. In paragraph (a)(12)(v)(D) by adding the words ''(or operating level)'' before the word ''data'';

n. In paragraph (b)(2)(v) by adding the word ''level'' after the word ''high'';

o. In paragraph (b)(4)(ii)(K) by removing the word ''and'' after the semicolon;

p. In paragraph (b)(4)(ii)(L) by removing the period and adding in its place ''; and'';

q. Adding paragraph (b)(4)(ii)(M);

r. In paragraph (c)(1) by removing the words ''§ 75.55(b) or'';

s. In paragraph (d)(1) introductory text by revising the word ''under'' to read ''using the procedures of'';

t. In paragraph (d)(1)(xi) by adding the word ''and'' after the semicolon and in paragraph (d)(1)(xii) by removing the semicolon and adding a period in its place;

u. Removing paragraphs (d)(1)(xiii) through (d)(1)(xvi);

v. Redesignating existing paragraph (d)(2) as (d)(3) and adding a new paragraph (d)(2); and

w. In newly designated paragraph (d)(3)(x) by revising the words ''§§ 75.19(c)(1)(iv)(B)(*1*) and (*3*)'' to read ''§ 75.19(c)(1)(iv)(B)(*1*)''.

The revisions and additions read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

The owner or operator shall meet all of the applicable recordkeeping requirements of this section.

(a) * * *

(7) * * *

(ii) * * *

(P) Average stack flow rate, adjusted, if applicable, for wall effects (scfh, wet basis);

* * * * *

(iii) * * *

(F) Average velocity differential pressure at traverse point (inches of H_2O) or the average of the square roots of the velocity differential pressures at the traverse point ((inches of $H_2O)^{1/2}$);

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(M) Number of hours excluded due to co-firing.

* * * * *

(d) * * *

(2) For each single-load or multiple-load appendix E test, record the following:

(i) The three-run average NO_X emission rate for each load level;

(ii) An indicator that the average NO_X emission rate is the highest NO_X average emission rate recorded at any load level of the test (if appropriate);

(iii) The default NO_X emission rate (highest three-run average NO_X emission rate at any load level), multiplied by 1.15, if appropriate;

(iv) An indicator that the add-on NO_X emission controls were operating or not operating during each run of the test; and

(v) Parameter data indicating the use and efficacy of control equipment during the test.

* * * * *

35. Section 75.60 is amended by:

a. In paragraph (b)(6), adding the words ''in writing (or by electronic mail)'' after the words ''If requested''; and

b. Adding paragraph (b)(7).

The revisions and additions read as follows:

§ 75.60 General provisions.

* * * * *

(b) * * *

(7) *Routine appendix E retest reports.* If requested in writing (or by electronic mail) by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy report within 45 days after completing a required periodic retest according to section 2.2 of appendix E to this part, or within 15 days of receiving the request, whichever is later. The designated representative shall report the hardcopy information required by § 75.59(b)(5) to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the hardcopy report.

* * * * *

36. Section 75.61 is amended by:

a. In paragraph (a)(1) introductory text by removing the words ''and except for testing only of the data acquisition and handling system'' from the end of the first sentence, and by adding two new sentences to the end of the paragraph;

b. In paragraph (a)(1)(i) by revising the heading and first sentence, and by adding a new sentence after the first sentence;

c. In paragraph (a)(1)(ii) by revising the word ''and'' to read '', and partial'' in the heading, and, in the first sentence, by adding the word

''required'' after the word ''retesting'', and revising the words ''recertification under § 75.20(b), notice of testing'' to read ''partial recertification testing required under § 75.20(b)(2), notice of the date of any required RATA testing or any required retesting under section 2.3 in appendix E to this part'';

d. In paragraph (a)(1)(iii) by adding the words ''or recertification'' after each occurrence of the word ''certification'' and by adding the words ''must be aborted, or'' after the words ''was failed or'';

e. In paragraph (a)(1)(iv) by revising both references to ''(a)(1)'' to read ''(a)(1)(ii)'', by adding the words ''or other retests'' to the end of the first sentence, and by adding the words ''(or other retests)'' after the words ''recertification tests'' in the second sentence;

f. In the first sentence of paragraph (a)(2) introductory text by adding the words '', or becomes affected,'' after the words ''commercial operation'';

g. In paragraph (a)(2)(i) by adding the words ''or becomes affected'' after the words ''commences commercial operation'';

h. In paragraph (a)(2)(ii) by adding the words ''or becomes affected,'' after both occurrences of the words ''commences commercial operation'' and by removing the comma between the words ''or'' and ''the date'';

i. In paragraph (a)(4) by removing ''(a)'' after the second and third occurrences of ''§ 75.4'';

j. Revising the heading and the first sentence of paragraph (a)(5) introductory text;

k. In paragraph (a)(5)(ii) by adding the words '', appendix E retest, or low mass emissions unit retest'' before the word ''immediately''; and

l. Revising paragraph (a)(6).

The revisions and additions read as follows:

§ 75.61 Notifications.

(a) * * *

(1) * * * The owner or operator shall also provide written notification of testing performed under § 75.19(c)(1)(iv)(A) to establish fuel-and-unit-specific NO_X emission rates for low mass emissions units. Such notifications are not required, however, for initial certifications and recertifications of excepted monitoring systems under appendix D to this part.

(i) Notification of initial certification testing and full recertification. Initial certification test notifications and notifications of full recertification testing under § 75.20(b)(2) shall be submitted not later than 21 days prior to the first scheduled day of certification or recertification testing. In emergency situations when full recertification testing is required following an uncontrollable failure of equipment that results in lost data, notice shall be sufficient if provided within 2 business days following the date when testing is scheduled.

* * * * *

(5) *Periodic relative accuracy test audits, appendix E retests, and low mass emissions unit retests.* The owner or operator or designated representative of an affected unit shall submit written notice of the date of periodic relative accuracy testing performed under section 2.3.1 of appendix B to this part, of periodic retesting performed under section 2.2 of appendix E to this part, and of periodic retesting of low mass emissions units performed under § 75.19(c)(1)(iv)(D), no later than 21 days prior to the first scheduled day of testing. * * *

* * * * *

(6) *Notice of combustion of emergency fuel under appendix D or E.* The designated representative of an oil-fired unit or gas-fired unit using appendix D or E of this part shall, for each calendar quarter in which emergency fuel is combusted, provide notice of the combustion of the emergency fuel in the cover letter (or electronic equivalent) which transmits the next quarterly report submitted under § 75.64. The notice shall specify the exact dates and hours during which the emergency fuel was combusted.

* * * * *

37. Section 75.62 is amended by:

a. Revising paragraph (a)(1); and

b. In the third sentence of paragraph (a)(2) by adding the words ''certification or'' before both occurrences of the word ''recertification''.

The revisions and additions read as follows:

§ 75.62 Monitoring plan submittals.

(a) * * *

(1) *Electronic.* Using the format specified in paragraph (c) of this section, the designated representative for an affected unit shall submit a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (a)(2) of this section) to the Administrator as follows: no later than 45 days prior to the initial certification tests; at the time of each certification or recertification application submission; in each electronic quarterly report; and whenever an update of the electronic monitoring plan information is required, either under § 75.53(b) or elsewhere in this part.

* * * * *

38. Section 75.63 is amended by:

a. In the section heading by removing the word ''submittals'';

b. Revising paragraphs (a)(1)(i) and (a)(1)(ii), and removing paragraph (a)(1)(iii);

c. In paragraph (a)(2) heading by adding the words ''and diagnostic testing'';

d. In paragraph (a)(2)(i) by adding the words ''under § 75.20(b)'' after the words ''recertification tests'' and the words ''of this section'' after the words ''paragraph (b)(1)'';

e. In paragraph (a)(2)(ii) by adding, in the first sentence, the words ''under § 75.20(b)'' after the word ''tests'' and the words ''of this section'' after the words ''paragraph (b)(2)'', and by revising, in the second sentence, the words ''for submission to it of a hardcopy recertification'' to read ''to provide hardcopy recertification test data and results'';

f. In paragraph (a)(2)(iii) by adding the words ''rather than recertification testing'' after the words ''are required'';

g. In paragraph (b)(1)(i), by removing the words ''§§ 75.53(c) and (d), or § '' and ''as applicable,'';

h. In paragraph (b)(1)(ii) by removing the words ''§ 75.56 or'' and ''as applicable,''; and

i. In the first sentence of paragraph (b)(2)(i), by removing the words ''§§ 75.53(c) and (d), or § '' and ''as applicable,''.

The revisions and additions read as follows:

§ 75.63 Initial certification or recertification application.

(a) * * *

(1) * * *

(i) For CEM systems or excepted monitoring systems under appendix D or E to this part, within 45 days after completing all initial certification tests, submit:

(A) To the Administrator, the electronic information required by paragraph (b)(1) of this section and a hardcopy certification application form (EPA form 7610–14). Except for subpart E applications for alternative monitoring systems or unless specifically requested by the Administrator, do not submit a hardcopy of the test data and results to the Administrator.

(B) To the applicable EPA Regional Office and the appropriate State and/or local air pollution control agency, the hardcopy information required by paragraph (b)(2) of this section.

(ii) For units for which the owner or operator is applying for certification

approval of the optional excepted methodology under § 75.19 for low mass emissions units, submit, no later than 45 days prior to commencing use of the methodology:

(A) To the Administrator, the electronic information required by § 75.53(f)(5)(i) and paragraph (b)(1)(i) of this section, and a hardcopy cover letter identifying the submittal as a low mass emissions unit certification application; and

(B) To the applicable EPA Regional Office and appropriate State and/or local air pollution control agency, the hardcopy information required by § 75.19(a)(2) and § 75.53(f)(5)(ii), the hardcopy results of any appendix E (of this part) tests or any CEMS data analysis used to derive a fuel-and-unit-specific default NO_X emission rate.

* * * * *

39. Section 75.64 is amended by:

a. In paragraph (a) introductory text by revising the first sentence, and by adding in the third sentence the words ''or has been placed in long-term cold storage'' after the words ''§ 75.4(a)'';

b. In paragraph (a)(2) introductory text by revising the words ''§§ 75.53 through 75.59'' to read § 75.53 and §§ 75.57 through 75.59'';

c. In paragraph (a)(2)(iii) by removing the words ''§ 75.54(f) or'';

d. In paragraph (a)(2)(iv) by removing the words ''§ 75.55(b)(3) or'';

e. In paragraph (a)(2)(vi) by removing the words ''§ 75.54(g) or'';

f. In paragraph (a)(2)(vii) by removing the words ''§ 75.56 or'';

g. In paragraph (a)(2)(viii) by adding a comma after the word ''coefficients'' and by removing the words ''§ 75.56(a)(5)(vii), § 75.56(a)(5)(ix),'';

h. In paragraph (a)(2)(xi) by removing the words ''§ 75.56(a)(7) or'';

i. In paragraph (a)(4) by removing the words ''hundredth prior to April 1, 2000 and to the nearest'' and the words ''on and after April 1, 2000'';

j. Removing and reserving paragraphs (a)(2)(v), (a)(8), and (e);

k. In paragraph (d) by revising the words ''electronic or hardcopy'' to read ''(unless otherwise approved by the Administrator) electronic''; and

l. In paragraph (f) by removing the words ''modem and''.

The revisions and additions read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the earlier of the calendar quarter corresponding to the date of provisional certification; or the calendar quarter corresponding to the relevant deadline for initial certification in § 75.4(a), (b), or (c). * * *

* * * * *

§ 75.65 [Amended].

40. Section 75.65 is amended by removing the words ''§ 75.54(f) or'' and '', as applicable,''.

§ 75.66 [Amended].

41. Section 75.66 is amended by:

a. In paragraph (e) by removing the words ''§ 75.55(b) or'' and '', as applicable,'';

b. In paragraph (f) introductory text by revising the reference to ''§ 75.34(a)(2)'' to ''§ 75.34(a)(3)''; and

c. Removing and reserving paragraph (i).

42. Section 75.70 is amended by:

a. Adding a hyphen to the term ''non-affected'' in paragraph (a)(1);

b. In paragraph (d)(1) by adding the words ''in § 75.20'' after the words ''recertification procedures'';

c. Revising paragraph (e);

d. In paragraph (f) introductory text by revising the reference to ''§ 75.74'' to read ''§ 75.74(c)(7)'';

e. In paragraph (f)(1) introductory text by revising the words ''missing data procedures in subpart D of this part'' to read ''applicable missing data procedures in §§ 75.31 through 75.37'';

f. In paragraphs (f)(1)(i), (ii), and (iii) by adding a comma after the word ''valid'' and revising the words ''quality assured'' to read ''quality-assured'';

g. In paragraphs (f)(1)(ii) and (iii) by removing the word ''or'' from the end of each paragraph;

h. In paragraph (f)(1)(iii) by adding the word ''rate'' after the first occurrence of the word ''input'', revising the word ''mmBtu'' to read ''mmBtu/hr'', and by removing the words ''or by an accepted monitoring system under appendix D to this part'';

i. In paragraph (f)(1)(iv) by revising the words ''volumetric flow monitor, and without a diluent monitor'' to read ''flow monitor'', by adding a comma after the reference to ''§ 75.32'', and by removing the period and adding ''; or'' to the end of the paragraph;

j. Adding new paragraph (f)(1)(v);

k. In paragraph (g)(1) by adding the word ''rate'' after the words ''and heat input'';

l. In paragraph (g)(2) by revising the words ''of the unit under section 2.1 of Appendix A of'' to read '', as defined in section 2.1.4.1 of appendix A to''; and

m. Revising paragraph (g)(6).

The revisions and additions read as follows:

§ 75.70 NO_X mass emissions provisions.

* * * * *

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for NO_X mass emissions, the owner or operator shall meet the applicable quality assurance and quality control requirements in § 75.21, appendix B to this part, and § 75.74(c) for the NO_X-diluent continuous emission monitoring systems, flow monitoring systems, NO_X concentration monitoring systems, moisture monitoring systems, and diluent monitors required under § 75.71. Units using the low mass emissions excepted methodology under § 75.19 shall meet the applicable quality assurance requirements of that section, except as otherwise provided in § 75.74(c). Units using excepted monitoring methods under appendices D and E to this part shall meet the applicable quality assurance requirements of those appendices.

(f) * * *

(1) * * *

(v) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system or an approved alternative monitoring method under subpart E of this part. This requirement does not apply when a default percent moisture value, as provided in § 75.11(b) or § 75.12(b), is used to account for the hourly moisture content of the stack gas.

* * * * *

(g) * * *

(6) For any unit using continuous emissions monitors, the conditional data validation procedures in § 75.20(b)(3)(ii) through (b)(3)(ix).

* * * * *

43. Section 75.71 is amended by:

a. In paragraph (a)(1) by adding the word ''rate'' after the words ''heat input'' and by removing the hyphen after each occurrence of the words ''O_2'' and ''CO_2'';

b. In the second sentence of paragraph (a)(2) by removing the hyphens after the words ''O_2'' and ''CO_2'' and by revising the words ''heat input, or, if applicable, use the procedures in appendix D to this part'' to read ''heat input rate'';

c. In paragraph (b)(1) by revising ''i.e.'' to read ''e.g.'' and by adding the words ''or to calculate the heat input rate'' before the words '', the owner'';

d. In paragraph (b)(3) by adding the word ''rate'' after the word ''input'' and by adding a comma after the word ''maintain''; and

e. In paragraph (c)(2) by adding the word ''rate'' to the end of the first

sentence and by revising the second sentence; and

f. In paragraph (d)(2) by revising the second sentence, by revising the words ''paragraph (c) of this section or, if applicable, paragraph (e)'' to read ''paragraph (c)(1) or (c)(2)'' in the third sentence, and by adding a new sentence at the end of the paragraph.

The revisions and additions read as follows:

§ 75.71 Specific provisions for monitoring NO_X emission rate and heat input for the purpose of calculating NO_X mass emissions.

* * * * *

(c) * * *

(2) * * * However, for a common pipe configuration, the heat input rate apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO_X mass reporting provisions of this subpart, unless all of the units served by the common pipe are affected units and have similar efficiencies; or

* * * * *

(d) * * *

(2) * * * However, for a common pipe configuration, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO_X mass reporting provisions of this subpart unless all of the units served by the common pipe are affected units and have similar efficiencies. * * * If the required CEMS are not installed and certified by that date, the owner or operator shall report hourly NO_X mass emissions as the product of the maximum potential NO_X emission rate (MER) and the maximum hourly heat input of the unit (as defined in § 72.2 of this chapter), starting with the first unit operating hour after the deadline and continuing until the CEMS are provisionally certified.

* * * * *

44. Section 75.72 is amended by:

a. In the introductory paragraph to the section by revising the words ''(in mmBtu/hr) and the hourly operating time (in hr)'' to read ''rate (in mmBtu/hr) and the unit or stack operating time (as defined in § 72.2)'';

b. Revising paragraph (a)(1) introductory text and paragraph (a)(1)(i);

c. Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and adding a new paragraph (a)(1)(ii);

d. In the newly redesignated paragraph (a)(1)(iii)(A) by adding the word ''rate'' after the words ''heat input'';

e. By adding the words ''and a diluent monitor'' after the word ''system'' in the newly redesignated paragraph (a)(1)(iii)(B);

f. In paragraph (a)(2) introductory text by adding the words '', for purposes of heat input determination,'' after the words ''from each unit and'';

g. In paragraph (a)(2)(ii)(A) by adding the word ''rate'' after the words ''heat input'';

h. In paragraph (b)(1) introductory text by removing the semicolon and by adding the words '', for purposes of heat input determination,'' at the end of the paragraph;

i. Revising paragraph (b)(1)(ii)(A);

j. In paragraph (b)(2)(ii)(B) by adding the word ''rate'' after the words ''heat input'' in the first sentence and by revising the second sentence;

k. In paragraph (b)(2)(iii) by adding the words '', in accordance with paragraph (a) of this section'' after the word ''purposes'';

l. Revising paragraph (c);

m. Revising paragraph (d);

n. In paragraph (e) introductory text by revising the first sentence, revising the words ''appendix F of'' to read ''appendix F to'' in the second sentence, and adding a new sentence between the first and second sentences;

o. In paragraph (e)(1) introductory text by revising the second sentence and adding a new third sentence;

p. In paragraph (e)(1)(i) by adding the word ''rate'' after ''heat input'' and by revising the reference to ''§ 75.16(e)(5)'' to read ''§ 75.16(e)(3)'';

q. In paragraph (e)(2) by adding the word ''rate'' after the words ''heat input'' in the first sentence and by removing the words ''or a common stack'' in the last sentence; and

r. In paragraph (g) by removing the words ''the owner or operator should'' and by revising the reference to ''§ 75.16(e)(5)'' to read ''§ 75.16(e)(3)''.

The revisions and additions read as follows:

§ 75.72 Determination of NO_X mass emissions.

* * * * *

(a) * * *

(1) Install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system and a flow monitoring system in the common stack, record the combined NO_X mass emissions for the units exhausting to the common stack, and, for purposes of determining the hourly unit heat input rates, either:

(i) Apportion the common stack heat input rate to the individual units according to the procedures in § 75.16(e)(3); or

(ii) Install, certify, operate, and maintain a flow monitoring system and diluent monitor in the duct to the common stack from each unit; or

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Use the procedures in appendix D to determine heat input for that unit; however, for a common pipe configuration, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO_X mass reporting provisions of this subpart unless all of the units served by the common pipe are affected units and have similar efficiencies; and

* * * * *

(2) * * *

(ii) * * *

(B) * * * However, for a common pipe serving both affected and non-affected units, the heat input rate apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO_X mass reporting provisions of this subpart. * * *

* * * * *

(c) *Unit with a main stack and a bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack to avoid the installed NO_X-diluent continuous emissions monitoring system or NO_X concentration monitoring system, the owner and operator shall either:

(1) Install, certify, operate, and maintain separate NO_X-diluent continuous emissions monitoring systems and flow monitoring systems on the main stack and the bypass stack and calculate NO_X mass emissions for the unit as the sum of the NO_X mass emissions measured at the two stacks;

(2) Monitor NO_X mass emissions at the main stack using a NO_X-diluent CEMS and a flow monitoring system and measure NO_X mass emissions at the bypass stack using the reference methods in § 75.22(b) for NO_X concentration, flow rate, and diluent gas concentration, or NO_X concentration and flow rate, and calculate NO_X mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain a NO_X-diluent CEMS and a flow monitoring system only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, since only the main stack is monitored. For each unit operating hour in which the bypass stack is used, report NO_X mass

emissions as follows. If the unit heat input is determined using a flow monitor and a diluent monitor, report NO_X mass emissions using the maximum potential NO_X emission rate, the maximum potential flow rate, and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable). The maximum potential NO_X emission rate may be specific to the type of fuel combusted in the unit during the bypass (see § 75.33(c)(8)). If the unit heat input is determined using a fuel flowmeter, in accordance with appendix D to this part, report NO_X mass emissions as the product of the maximum potential NO_X emission rate and the actual measured hourly heat input rate.

(d) *Unit with multiple stack or duct configuration.* When the flue gases from an affected unit discharge to the atmosphere through more than one stack, or when the flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain a NO_X-diluent continuous emission monitoring system and a flow monitoring system in each of the multiple stacks and determine NO_X mass emissions from the affected unit as the sum of the NO_X mass emissions recorded for each stack. If another unit also exhausts flue gases into one of the monitored stacks, the owner or operator shall comply with the applicable requirements of paragraphs (a) and (b) of this section, in order to properly determine the NO_X mass emissions from the units using that stack;

(2) Install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system and a flow monitoring system in each of the ducts that feed into the stack, and determine NO_X mass emissions from the affected unit using the sum of the NO_X mass emissions measured at each duct; or

(3) If the unit is eligible to use the procedures in appendix D to this part and if the conditions and restrictions of § 75.17(c)(2) are fully met, install, certify, operate, and maintain a NO_X-diluent continuous emissions monitoring system in one of the ducts feeding into the stack or in one of the multiple stacks, (as applicable) in accordance with § 75.17(c)(2), and use the procedures in appendix D to this part to determine heat input rate for the unit.

(e) * * * The owner or operator may use a NO_X concentration monitoring system and a flow monitoring system to determine NO_X mass emissions for the cases described in paragraphs (a) through (c) of this section and in paragraph (d)(1) or paragraph (d)(2) of this section (in place of a NO_X-diluent continuous emissions monitoring system and a flow monitoring system). However, this option may not be used for the case described in paragraph (d)(3) of this section. * * *

(1) * * * In addition, the owner or operator must provide heat input rate values for each unit utilizing a common stack. The owner or operator may either:

* * * * *

45. Section 75.73 is amended by:

a. In the second sentence of paragraph (a) by adding the word ''compliance'' before the word ''deadline'', and by revising the reference to ''§ 75.70'' to read ''§ 75.70(b)'';

b. In paragraph (a)(6) introductory text by removing the word ''following'', by revising the words ''this paragraph'' to read ''§ 75.58(c)'', and by removing the colon at the end of the paragraph and adding a period in its place;

c. Removing paragraphs (a)(6)(i) through (a)(6)(vi) and paragraphs (e)(1)(i) and (e)(1)(ii);

d. Adding new paragraphs (a)(8), (d)(6), (f)(1)(vii), and (f)(1)(viii);

e. Revising the second and third sentences of paragraph (c)(3) and adding a new last sentence;

f. Revising paragraph (e)(1); and

g. In paragraph (e)(2) by adding the words ''certification or'' before the words ''recertification application'' in the third sentence, and by adding a new sentence to the end of the paragraph.

The revisions and additions read as follows:

§ 75.73 Recordkeeping and reporting.

(a) * * *

(8) Formulas from monitoring plan for total NO_X mass.

* * * * *

(c) * * *

(3) * * * In addition, to the extent applicable, each monitoring plan shall contain the information in § 75.53, paragraphs (f)(1)(i), (f)(2)(i), and (f)(4) in electronic format and the information in § 75.53, paragraphs (f)(1)(ii) and (f)(2)(ii) in hardcopy format. For units using the low mass emissions excepted methodology under § 75.19, the monitoring plan shall include the additional information in § 75.53, paragraphs (f)(5)(i) and (f)(5)(ii). The monitoring plan also shall identify, in electronic format, the reporting schedule for the affected unit (ozone season or quarterly), the beginning and end dates for the reporting schedule, seasonal controls indicator, ozone season fuel switching flag, and whether year-round reporting for the unit is required by a State or local agency.

(d) * * *

(6) *Routine appendix E retest reports.* If requested by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy report within 45 days after completing a required periodic retest according to section 2.2 of appendix E to this part, or within 15 days of receiving the request, whichever is later. The designated representative shall report the hardcopy information required by § 75.59(b)(5) to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the hardcopy report.

(e) * * *

(1) *Electronic submission.* The designated representative for an affected unit shall submit to the Administrator a complete, electronic, up-to-date monitoring plan file for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii), no later than 45 days prior to the initial certification test; at the time of a certification or recertification application submission; and whenever an update of the electronic monitoring plan is required, either under § 75.53 or elsewhere in this part.

(2) * * * Electronic submittal of all monitoring plan information, including hardcopy portions, is permissible provided that a paper copy of the hardcopy portions can be furnished upon request.

(f) * * *

(1) * * *

(vii) Reporting period heat input.

(viii) New reporting frequency and begin date of the new reporting frequency (if applicable).

* * * * *

46. Section 75.74 is amended by:

a. Revising paragraph (c)(2)(i)(D)(*1*);

b. Adding a new second sentence to paragraph (c)(2)(ii) introductory text;

c. In paragraph (c)(2)(ii)(A), adding the words ''(or operating level(s))'' after the words ''RATA load level(s)'';

d. Revising paragraphs (c)(2)(ii)(C) and (c)(2)(ii)(H)(*1*);

e. In paragraph (c)(3)(iii) by revising the first and second sentences;

f. In paragraph (c)(3)(iv) by adding in the second sentence the word ''the'' after the word ''only'' and by revising the words ''included when determining'' to read ''used to determine'';

g. In paragraph (c)(3)(v) by adding a new second sentence;

h. In paragraph (c)(3)(vi)(B) by removing the quotation marks around the words ''probationary calibration error test'' in the first sentence, by revising the reference to ''§ 75.20(b)(3)'' to read ''§ 75.20(b)(3)(ii)'' in the first sentence, and by adding the words ''(subject to the restrictions in paragraph (c)(3)(xii) of this section)'' after the words''§ 75.20(b)(3)'' in the third sentence;

i. In paragraph (c)(3)(x) by adding the words '', if applicable,'' after the words ''§ 75.20(b)(3) and'';

j. In paragraph (c)(3)(xi) by adding a comma after each occurrence of the word ''diagnostic'', by revising the words ''§ 75.31 or § 75.33'' in the third sentence to read '' § 75.31, § 75.33, or § 75.37'', and by adding the words ''conditional data validation'' before the word ''provisions'' in the fifth sentence;

k. In paragraphs (c)(3)(xii)(A) and (B) by revising each occurrence of the words ''§ 75.31 or § 75.33'' to read ''§ 75.31, § 75.33, or § 75.37'', by adding a comma after the occurrence of the word ''diagnostic'' in each paragraph, and by adding the words ''conditional data validation'' before the word ''provisions'' in the second sentence of paragraph (c)(3)(xii)(B).

l. In paragraph (c)(4) by adding the word ''rate'' after the words ''heat input'' in the first sentence and by adding a new third sentence;

m. In paragraph (c)(5) by adding the word ''rate'' after the words ''heat input'';

n. Revising paragraphs (c)(6)(v), (c)(7)(ii), and (c)(8)(ii);

o. Adding a new paragraph (c)(7)(iii);

p. Revising paragraph (c)(10); and

q. In the second sentence of paragraph (c)(11) by revising the word ''calender'' to read ''calendar''.

The revisions and additions read as follows:

§ 75.74 Annual and ozone season monitoring and reporting requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) * * *

(*1*) If the monitor passed a linearity check on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for fewer than 336 unit or stack operating hours (as defined in § 72.2 of this chapter) in the previous ozone season, the owner or operator may have a grace period of up to 168 unit or stack operating hours to perform a linearity check, subject to the restrictions in this paragraph and in paragraph (c)(3)(xii) of this section, and the owner or operator may continue to submit quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than the allowable grace period of 168 unit or stack operating hours in the current ozone season without a linearity check of the monitor having been performed, the owner or operator of the unit shall either report data from a certified backup monitoring system or reference method or shall report substitute data using the missing data procedures under paragraph (c)(7) of this section, starting with the first unit or stack operating hour after the grace period expires and continuing until the successful completion of a linearity check. Note that the grace period shall not extend beyond the end of the third calendar quarter.

* * * * *

(ii) * * * Notwithstanding this requirement, a pre-ozone season RATA need not be performed between October 1 and April 30, if a RATA was passed during the previous ozone season and if the conditions in paragraph (c)(3)(vii) of this section are met, thereby ensuring that the data from the CEMS are quality-assured at the beginning of the current ozone season.

* * * * *

(C) For flow rate monitoring systems installed on peaking units or bypass stacks and for flow monitors exempted from multiple-level RATA testing under section 6.5.2(e) of appendix A to this part, a single-load (or single-level) RATA is required. For all other flow rate monitoring systems, a 2-load (or 2-level) RATA is required at the two most frequently-used load or operating levels (as defined under section 6.5.2.1 of appendix A to this part), with the following exceptions. Except for flow monitors exempted from 3-level RATA testing under section 6.5.2(e) of appendix A to this part, a 3-load flow RATA is required at least once every five years and is also required if the flow monitor polynomial coefficients or K factor(s) are changed prior to conducting the flow RATA required under this paragraph.

* * * * *

(H) * * * (*1*) If the monitoring system passed a RATA on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for fewer than 336 unit or stack operating hours (as defined in § 72.2 of this chapter) in the previous ozone season, the owner or operator may have a grace period of up to 720 unit or stack operating hours to perform a RATA, subject to the restrictions in this paragraph and in paragraph (c)(3)(xii) of this section, and the owner or operator may continue to report quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than the allowable grace period of 720 unit or stack operating hours in the current ozone season, without a RATA of the monitoring system having been performed, the owner or operator of the unit or stack shall either report data from a certified backup monitoring system or reference method or shall report substitute data using the missing data procedures under paragraph (c)(7) of this section, starting with the first unit operating hour after the grace period expires and continuing until the successful completion of the RATA. Note that the grace period shall not extend beyond the end of the third calendar quarter.

* * * * *

(3) * * *

(iii) For each flow monitoring system required by this subpart, except for flow monitors installed on non-load-based units that do not produce electrical or thermal output, flow-to-load ratio tests are required in the second and third calendar quarters, in accordance with section 2.2.5 of appendix B to this part. If the flow-to-load ratio test for the second calendar quarter is failed, the owner or operator shall follow the procedures in section 2.2.5(c)(8) of appendix B to this part. * * *

* * * * *

(v) * * * Automatic deadline extensions may be claimed for the two calendar quarters outside the ozone season (the first and fourth calendar quarters), since a fuel flow-to-load ratio test is not required in those quarters. * * *

* * * * *

(4) * * * The owner or operator shall include all calendar quarters in the year when determining the deadline for visual inspection of the primary fuel flowmeter element, as specified in section 2.1.6(c) of appendix D to this part.

* * * * *

(6) * * *

(v) The results of RATAs (and any other quality assurance test(s) required under paragraph (c)(2) or (c)(3) of this section) which affect data validation for the current ozone season, but which were performed outside the ozone season (i.e., between October 1 of the previous calendar year and April 30 of the current calendar year), shall be reported in the quarterly report for the second quarter of the current calendar year (or in the report for the third calendar quarter of the current calendar

year, if the unit or stack does not operate in the second quarter).

(7) * * *

(ii) The applicable missing data procedures of §§ 75.31 through 75.37 shall be used, with one exception. When a fuel which has a significantly higher NO_X emission rate than any of the fuel(s) combusted in prior ozone seasons is combusted in the unit, and no quality-assured NO_X data have been recorded in the current, or any previous, ozone season while combusting the new fuel, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, from a NO_X-diluent continuous emission monitoring system, or the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, from a NO_X concentration monitoring system. The maximum potential value used shall be specific to the new fuel. The owner or operator shall substitute the maximum potential value for each hour of missing NO_X data until the first hour that quality-assured NO_X data are obtained while combusting the new fuel, and then shall resume use of the missing data routines in §§ 75.31 through 75.37; and

(iii) In order to apply the missing data routines described in §§ 75.31 through 75.37 on an ozone season-only basis, the procedures in those sections shall be modified as follows:

(A) The use of the initial missing data procedures in § 75.31 shall commence with the first unit operating hour in the first ozone season for which emissions data are required to be reported under § 75.64.

(B) In § 75.31(a), the phrases ''During the first 720 quality-assured monitor operating hours within the ozone season'' and ''during the first 2,160 quality-assured monitor operating hours within the ozone season'' apply respectively instead of the phrases ''During the first 720 quality-assured monitor operating hours'' and ''during the first 2,160 quality-assured monitor operating hours''.

(C) In § 75.32(a), the phrases ''the first 720 quality-assured monitor operating hours within the ozone season'' and ''the first 2,160 quality-assured monitor operating hours within the ozone season'' apply, respectively, instead of the phrases ''the first 720 quality-assured monitor operating hours'' and ''the first 2,160 quality-assured monitor operating hours''.

(D) In § 75.32(a)(1), the phrase ''Following initial certification, prior to completion of 3,672 unit (or stack) operating hours within the ozone season'' applies instead of the phrase ''Prior to completion of 8,760 unit (or stack) operating hours following initial certification''.

(E) In Equation 8, the phrase ''Total unit operating hours within the ozone season'' applies instead of the phrase ''Total unit operating hours''.

(F) In § 75.32(a)(2), the phrase ''3,672 unit (or stack) operating hours within the ozone season'' applies instead of the phrase ''8,760 unit (or stack) operating hours''.

(G) In the numerator of Equation 9, the phrase ''Total unit operating hours within the ozone season'' applies instead of the phrase ''Total unit operating hours'', and the phrase ''3,672 unit operating hours within the ozone season'' applies instead of the phrase ''8,760 unit operating hours''. In the denominator of Equation 9, the number ''3,672'' applies instead of ''8,760''.

(H) Use the following instead of the first three sentences in § 75.32(a)(3): ''When calculating percent monitor data availability using Equation 8 or 9, the owner or operator shall include all unit or stack operating hours within the ozone season, and all monitor operating hours within the ozone season for which quality-assured data were recorded by a certified primary monitor; a certified redundant or non-redundant backup monitor or a reference method for that unit; or by an approved alternative monitoring system under subpart E of this part. No hours from more than three years (26,280 clock hours) earlier shall be used in Equation 9. For a unit that has accumulated fewer than 3,672 ozone season operating hours in the previous three years, use the following: in the numerator of Equation 9 use ''Total unit operating hours within the ozone season for which quality-assured data were recorded in the previous three years''; and in the denominator of Equation 9 use ''Total unit operating hours within the ozone season, in the previous three years'.''

(I) In § 75.33(a), the phrases ''the first 720 quality-assured monitor operating hours within the ozone season'' and ''the first 2,160 quality-assured monitor operating hours within the ozone season'' apply, respectively, instead of the phrases ''the first 720 quality-assured monitor operating hours'' and ''the first 2,160 quality-assured monitor operating hours''.

(J) Instead of the last sentence of § 75.33(a), use ''For the purposes of missing data substitution, the owner or operator of a unit shall use only quality-assured monitor operating hours of data that were recorded within the ozone season and no more than three years (26,280 clock hours) prior to the date and time of the missing data period.''

(K) In §§ 75.33(b), 75.33(c), 75.35, 75.36, and 75.37, the phrases ''720 quality-assured monitor operating hours within the ozone season'' and ''2,160 quality-assured monitor operating hours within the ozone season'' apply, respectively, instead of the phrases ''720 quality-assured monitor operating hours'' and ''2,160 quality-assured monitor operating hours''.

(L) In § 75.34(a)(3), the phrase ''720 quality-assured monitor operating hours within the ozone season'' applies instead of ''720 quality-assured monitor operating hours''.

(8) * * *

(ii) For units with add-on emission controls, using the missing data options in § 75.34(a)(1) through § 75.34(a)(4), the range of operating parameters for add-on emission controls, as described in § 75.34(a) and information for verifying proper operation of the add-on emission controls during missing data periods, as described in § 75.34(d).

* * * * *

(10) Units may qualify to use the low mass emissions excepted monitoring methodology in § 75.19 on an ozone season basis. In order to be allowed to use this methodology, a unit may not emit more than 50 tons of NO_X per ozone season, as provided in § 75.19(a)(1)(i)(A)(*3*). If any low mass emissions unit fails to provide a demonstration that its ozone season NO_X mass emissions are less than or equal to 50 tons, then the unit is disqualified from using the methodology. The owner or operator must install and certify any equipment needed to ensure that the unit is monitored using an acceptable methodology by December 31 of the following year.

* * * * *

Appendix A Section 1 [Amended]

47. Appendix A to part 75 is amended by:

a. In section heading 1.1 by revising the words ''Pollutant Concentration and CO_2 or O_2'' to read ''Gas'';

b. In the second sentence of section 1.1 by revising the words ''SO_2 pollutant concentration monitor or NO_X'' to read ''SO_2, CO_2, O_2, or NO_X concentration monitoring system or NO_X-diluent'';

c. In section heading 1.1.1 by removing the words ''Pollutant Concentration and CO_2 or O_2'';

d. In section heading 1.1.2 by removing the words ''Pollutant Concentration and CO_2 or O_2 Gas'';

e. In the fourth sentence of section 1.2 by revising the words ''section 6.5.2'' to read ''section 6.5.2.1''; and

f. Removing the first sentence of section 1.2.2.

48. Appendix A to part 75 is amended by:

a. Revising the second and third sentences of section 2.1;

b. In the first sentence of section 2.1.1 by revising the words ''this section 2'' to read ''sections 2.1.1.1 through 2.1.1.5 of this appendix'';

c. Amending paragraph (a) of section 2.1.1.1 by adding two new sentences following the third sentence;

d. Transferring Equations A–1a and A–1b and the variable equations and Note following them from paragraph (c) of section 2.1.1.1 to the end of paragraph (a) of section 2.1.1.1, and then revising the definition of the variable ''%S'' in Equation A–1b and adding a definition for the variable ''GCV'' after the definition of the variable ''$\%CO_{2w}$'' in Equation A–1b;

e. Amending paragraph (b) of section 2.1.1.1 by adding a new sentence after the first sentence and by adding two new sentences to the end of the paragraph;

f. Adding three sentences to the end of paragraph (a) of section 2.1.1.2;

g. Adding a new second sentence to paragraph (c) of section 2.1.1.2 ;

h. Revising the definition of the variable ''MPC'' in Equation A–2 of paragraph (c) of section 2.1.1.2;

i. Revising the fifth and tenth sentences of section 2.1.1.3;

j. In paragraph (c) of section 2.1.1.4 by adding a new second sentence;

k. Removing the first sentence of paragraph (d) of section 2.1.1.4 and adding three sentences in its place;

l. Adding a new fifth sentence in paragraph (g) of section 2.1.1.4;

m. In the first sentence of section 2.1.1.5, revising the words ''paragraphs (a) and (b)'' to read ''paragraphs (a), (b), and (c)'';

n. Removing the final sentence in paragraph (c) of section 2.1.1.5 and adding a new final sentence;

o. In section 2.1.2, revising the words ''section 2.1.2.1'' to read ''sections 2.1.2.1 through 2.1.2.5 of this appendix'';

p. In paragraph (a) of section 2.1.2.1 by adding a new second sentence, by revising the word ''part'' to read ''section'' in the first sentence of Option 1, by adding two new sentences at the end of Option 1, by adding a new sentence at the end of Option 2, by removing the word ''or'' from Option 3, by removing the period at the end of Option 4 and adding ''; or'' in its place; and by adding a new Option 5;

q. Adding a new final sentence to paragraph (b) of section 2.1.2.1;

r. Adding two new sentences to the end of paragraph (c) of section 2.1.2.1;

s. Revising the first sentence of paragraph (d) of section 2.1.2.1;

t. Revising paragraph (e) and Table 2–2 in section 2.1.2.1;

u. Revising paragraph (a) of section 2.1.2.2;

v. In the third sentence of paragraph (b) of section 2.1.2.2, adding the words ''(if applicable)'' after the words '' NO_X emissions'';

w. In paragraph (c) of section 2.1.2.2 by adding the words ''from the NO_X component of a certified monitoring system,'' after the words ''quality assured data'' in the first sentence, by adding the words ''(for units with add-on NO_X controls or turbines using dry low NO_X technology)'' after the words ''malfunction or'' in the second sentence, by adding the words ''(if applicable)'' after the words ''NO_X emissions'' in the third sentence, and by adding a new second sentence after the first sentence;

x. Revising the fourth sentence of paragraph (a) of section 2.1.2.3;

y. In the first sentence of paragraph (b) of section 2.1.2.3, revising the words ''requires a span'' to read ''requires or allows the use of a span value'';

z. Revising the second sentence of paragraph (b) of section 2.1.2.4 and adding a new sentence after the first sentence;

aa. Removing the first sentence of paragraph (c) of section 2.1.2.4 and adding three sentences in its place;

bb. In paragraph (e) of section 2.1.2.4 by adding the words ''or, for units that use dry low NO_X technology,'' after the word ''SNCR),'';

cc. Adding a new sentence after the fourth sentence in paragraph (f) of section 2.1.2.4;

dd. In the third sentence of section 2.1.2.5, revising the words ''paragraphs (a) and (b)'' to read ''paragraphs (a), (b), and (c)'';

ee. In paragraph (c) of section 2.1.2.5, adding the word ''diagnostic'' before the words ''linearity test'' in the fifth sentence and revising the final sentence;

ff. Adding a sentence to the end of the section 2.1.3;

gg. Adding two new sentences to the beginning of section 2.1.3.3;

hh. Revising the third sentence of section 2.1.4.1;

ii. In the fifth sentence of section 2.1.4.2, by adding the words '', as specified in section 2.2.2.1 of this appendix'' after the words ''of the calibration span value'';

jj. Adding a sentence to the end of section 2.1.6; and

kk. Adding text to reserved section 2.2.

The revisions and additions read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

2. Equipment Specifications

2.1 Instrument Span and Range

* * * To meet these objectives, select the range such that the majority of the readings obtained during typical unit operation are kept, to the extent practicable, between 20.0 and 80.0 percent of the full-scale range of the instrument. These guidelines do not apply to: (1) SO_2 readings obtained during the combustion of very low sulfur fuel (as defined in § 72.2 of this chapter); (2) SO_2 or NO_X readings recorded on the high measurement range, for units with SO_2 or NO_X emission controls and two span values, unless the emission controls are operated seasonally (for example, only during the ozone season); or (3) SO_2 or NO_X readings less than 20.0 percent of full-scale on the low measurement range for a dual span unit, provided that the maximum expected concentration (MEC), low-scale span value, and low-scale range settings have been determined according to sections 2.1.1.2, 2.1.1.4(a), (b), and (g) of this appendix (for SO_2), or according to sections 2.1.2.2, 2.1.2.4(a) and (f) of this appendix (for NO_X).

2.1.1 SO_2 Pollutant Concentration Monitors

2.1.1.1 Maximum Potential Concentration

(a) * * * If both the fuel sulfur content and the GCV are routinely determined from each fuel sample, the owner or operator may, as an alternative to using the highest individual percent sulfur and lowest individual GCV values in the MPC calculation, pair the sulfur content and GCV values from each sample analysis and calculate the ratio of percent sulfur to GCV (*i.e.*, %S/GCV) for each pair of values. If this option is selected, the MPC shall be calculated using the highest %S/GCV ratio in Equation A–1a or A–1b.

* * * * *

(Eq. A–1b)

Where * * *

%S = Maximum sulfur content of fuel to be fired, wet basis, weight percent, as determined according to the applicable method in paragraph (c) of section 2.1.1.1.

* * * * *

GCV = Minimum gross calorific value of the fuel or blend to be combusted, based on historical fuel sampling and analysis data or, if applicable, based on the fuel contract specifications (Btu/lb). If based on fuel sampling and analysis, the GCV shall be determined according to the applicable method in paragraph (c) of section 2.1.1.1.

* * * * *

(b) * * * For the purposes of this section, 2.1.1.1, a ''certified'' CEMS means a CEM system that has met the applicable certification requirements of either: This part, or part 60 of this chapter, or a State CEM program, or the source operating permit. * * * Note that the initial MPC value is subject to periodic review under section 2.1.1.5 of this appendix. If an MPC value is found to be either inappropriately high or low, the

MPC shall be adjusted in accordance with section 2.1.1.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

2.1.1.2 Maximum Expected Concentration

(a) * * * Each initial MEC value shall be documented in the monitoring plan required under § 75.53. Note that each initial MEC value is subject to periodic review under section 2.1.1.5 of this appendix. If an MEC value is found to be either inappropriately high or low, the MEC shall be adjusted in accordance with section 2.1.1.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

(c) * * * For the purposes of this section, 2.1.1.2, a ''certified'' CEMS means a CEM system that has met the applicable certification requirements of either: This part, or part 60 of this chapter, or a State CEM program, or the source operating permit.

* * * * *

MPC = Maximum potential concentration (ppm), as determined by Eq. A–1a or A–1b in section 2.1.1.1 of this appendix.

* * * * *

2.1.1.3 Span Value(s) and Range(s)

* * * If the SO_2 span concentration is ≤ 500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm. * * * If an existing State, local, or federal requirement for span of an SO_2 pollutant concentration monitor requires or allows the use of a span value lower than that required by this section or by section 2.1.1.4 of this appendix, the State, local, or federal span value may be used if a satisfactory explanation is included in the monitoring plan, unless span and/or range adjustments become necessary in accordance with section 2.1.1.5 of this appendix. * * *

2.1.1.4 Dual Span and Range Requirements

* * * * *

(c) * * * Alternatively, if RATAs are performed and passed on both measurement ranges, the owner or operator may use two separate SO_2 analyzers connected to separate probes and sample interfaces. * * *

(d) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: when a single probe and sample interface are used, either designate the low and high monitor ranges as separate SO_2 components of a single, primary SO_2 monitoring system; designate the low and high monitor ranges as the SO_2 components of two separate, primary SO_2 monitoring systems; designate the normal monitor range as a primary monitoring system and the other monitor range as a non-redundant backup monitoring system; or, when a single, dual-range SO_2 analyzer is used, designate the low and high ranges as a single SO_2 component of a primary SO_2 monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)). When two SO_2 analyzers are connected to separate probes and sample interfaces, designate the analyzers as the SO_2 components of two separate, primary SO_2 monitoring systems. For units with SO_2 controls, if the default high range value is used, designate the low range analyzer as the SO_2 component of a primary SO_2 monitoring system. * * *

* * * * *

(g) * * * However, if the default high range option in paragraph (f) of this section is selected, the full-scale of the low measurement range shall not exceed five times the MEC value (where the MEC is rounded upward to the next highest multiple of 10 ppm). * * *

2.1.1.5 Adjustment of Span and Range

* * * * *

(c) * * * Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

2.1.2 NO_X Pollutant Concentration Monitors

* * * * *

2.1.2.1 Maximum Potential Concentration

(a) * * * For the purposes of this section, 2.1.2.1, and section 2.1.2.2 of this appendix, a ''blend'' means a frequently-used fuel mixture having a consistent composition (e.g., an oil and gas mixture where the relative proportions of the two fuels vary by no more than 10%, on average). * * *

Option 1: * * * For cement kilns, use 2000 ppm as the MPC. For process heaters, use 200 ppm if the unit burns only gaseous fuel and 500 ppm if the unit burns oil;

Option 2: * * * For a new gas-fired or oil-fired combustion turbine, if a default MPC value of 50 ppm was previously selected from Table 2–2, that value may be used until March 31, 2003;

* * * * *

Option 5: If a reliable estimate of the uncontrolled NO_X emissions from the unit is available from the manufacturer, the estimated value may be used.

(b) * * * As a second alternative, when the NO_X MPC is determined from emission test results or from historical CEM data, as described in paragraphs (a), (d) and (e) of this section, quality-assured diluent gas (i.e., O_2 or CO_2) data recorded concurrently with the MPC may be used to calculate the MER.

(c) * * * Note that whichever MPC option in paragraph 2.1.2.1(a) of this appendix is selected, the initial MPC value is subject to periodic review under section 2.1.2.5 of this appendix. If an MPC value is found to be either inappropriately high or low, the MPC shall be adjusted in accordance with section 2.1.2.5, and corresponding span and range adjustments shall be made, if necessary.

(d) For units with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), or for units equipped with dry low-NO_X (DLN) technology, NO_X emission testing may only be used to determine the MPC if testing can be performed either upstream of the add-on controls or during a time or season when the add-on controls are not in operation or when the DLN controls are not in the premixed (low-NO_X) mode. * * *

(e) If historical CEM data are used to determine the MPC, the data must, for uncontrolled units or units equipped with low-NO_X burner technology and no other NO_X controls, represent a minimum of 720 quality assured monitor operating hours from the NO_X component of a certified monitoring system, obtained under various operating conditions including the minimum safe and stable load, normal load (including periods of high excess air at normal load), and maximum load. For the purposes of this section, 2.1.2.1, a ''certified'' CEMS means a CEM system that has met the applicable certification requirements of either: this part, or part 60 of this chapter, or a State CEM program, or the source operating permit. For a unit with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), or for a unit equipped with dry low-NO_X (DLN) technology, historical CEM data may only be used to determine the MPC if the 720 quality assured monitor operating hours of CEM data are collected upstream of the add-on controls or if the 720 hours of data include periods when the add-on controls are not in operation or when the DLN controls are not in the premixed (low-NO_X mode). For units that do not produce electrical or thermal output, the data must represent the full range of normal process operation. The highest hourly NO_X concentration in ppm shall be the MPC.

* * * * *

TABLE 2-2. -- MAXIMUM POTENTIAL CONCENTRATION FOR NO_X -- Gas- And Oil-Fired Units

Unit type	Maximum potential concentration for NO_x (ppm)
Tangentially-fired dry bottom	380
Wall-fired dry bottom	600
Roof-fired (vertically-fired) dry bottom, arch-fired	550
Existing combustion turbine	200
New combustion turbine, permitted to fire either oil or natural gas	200
New combustion turbine, permitted to fire only natural gas	150
Others	(1)

[1] As approved by the Administrator

2.1.2.2 Maximum Expected Concentration

(a) Make an initial determination of the maximum expected concentration (MEC) of NO_X during normal operation for affected units with add-on NO_X controls of any kind (*e.g.*, steam injection, water injection, SCR, or SNCR) and for turbines that use dry low-NO_X technology. Determine a separate MEC value for each type of fuel (or blend) combusted in the unit, except for fuels that are only used for unit startup and/or flame stabilization. Calculate the MEC of NO_X using Equation A–2, if applicable, inserting the maximum potential concentration, as determined using the procedures in section 2.1.2.1 of this appendix. Where Equation A–2 is not applicable, set the MEC either by: (1) measuring the NO_X concentration using the testing procedures in this section; (2) using historical CEM data over the previous 720 (or more) quality assured monitor operating hours; or (3) if the unit has add-on NO_X controls or uses dry low NO_X technology, and has a federally-enforceable permit limit for NO_X concentration, the permit limit may be used as the MEC. Include in the monitoring plan for the unit each MEC value and the method by which the MEC was determined. Note that each initial MEC value is subject to periodic review under section 2.1.2.5 of this appendix. If an MEC value is found to be either inappropriately high or low, the MEC shall be adjusted in accordance with section 2.1.2.5, and corresponding span and range adjustments shall be made, if necessary.

* * * * *

(c) * * * For the purposes of this section, 2.1.2.2, a ''certified'' CEMS means a CEM system that has met the applicable certification requirements of either: this part, or part 60 of this chapter, or a State CEM program, or the source operating permit. * * *

2.1.2.3 Span Value(s) and Range(s)

(a) * * * If the NO_X span concentration is ≤500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm. * * *

* * * * *

2.1.2.4 Dual Span and Range Requirements

* * * * *

(b) * * * Two separate NO_X analyzers connected to separate probes and sample interfaces may be used if RATAs are passed on both ranges. For units with add-on NO_X emission controls (e.g., steam injection, water injection, SCR, or SNCR) or units equipped with dry low-NO_X technology, the owner or operator may use a low range analyzer and a ''default high range value,'' as described in paragraph 2.1.2.4(e) of this section, in lieu of maintaining and quality assuring a high-scale range. * * *

(c) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: when a single probe and sample interface are used, either designate the low and high ranges as separate NO_X components of a single, primary NO_X monitoring system; designate the low and high ranges as the NO_X components of two separate, primary NO_X monitoring systems; designate the normal range as a primary monitoring system and the other range as a non-redundant backup monitoring system; or, when a single, dual-range NO_X analyzer is used, designate the low and high ranges as a single NO_X component of a primary NO_X monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)). When two NO_X analyzers are connected to separate probes and sample interfaces, designate the analyzers as the NO_X components of two separate, primary NO_X monitoring systems. For units with add-on NO_X controls or units equipped with dry low-NO_X technology, if the default high range value is used, designate the low range analyzer as the NO_X component of the primary NO_X monitoring system. * * *

* * * * *

(f) * * * However, if the default high range option in paragraph (e) of this section is selected, the full-scale of the low measurement range shall not exceed five times the MEC value (where the MEC is rounded upward to the next highest multiple of 10 ppm). * * *

2.1.2.5 Adjustment of Span and Range

* * * * *

(c) * * * Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

2.1.3 CO_2 and O_2 Monitors

* * * If a dual-range or autoranging diluent analyzer is installed, the analyzer may be represented in the monitoring plan as a single component, using a special component type code specified by the Administrator to satisfy the requirements of § 75.53(e)(1)(iv)(D).

* * * * *

2.1.3.3 Adjustment of Span and Range

The MPC and MEC values for diluent monitors are subject to the same periodic review as SO_2 and NO_X monitors (see sections 2.1.1.5 and 2.1.2.5 of this appendix). If an MPC or MEC value is found to be either inappropriately high or low, the MPC shall be adjusted and corresponding span and range adjustments shall be made, if necessary. * * *

* * * * *

2.1.4 Flow Monitors

* * * * *

2.1.4.1 Maximum Potential Velocity and Flow Rate

* * * If using test values, use the highest average velocity (determined from the Method 2 traverses) measured at or near the maximum unit operating load (or, for units that do not produce electrical or thermal output, at the normal process operating conditions corresponding to the maximum stack gas flow rate). * * *

* * * * *

2.1.6 Maximum Potential Moisture Percentage

* * * Alternatively, a default maximum potential moisture value of 15.0 percent H_2O may be used.

2.2 Design for Quality Control Testing

2.2.1 Pollutant Concentration and CO_2 or O_2 Monitors

(a) Design and equip each pollutant concentration and CO_2 or O_2 monitor with a calibration gas injection port that allows a check of the entire measurement system when calibration gases are introduced. For extractive and dilution type monitors, all monitoring components exposed to the sample gas, (e.g., sample lines, filters, scrubbers, conditioners, and as much of the probe as practicable) are included in the measurement system. For in situ type monitors, the calibration must check against the injected gas for the performance of all active electronic and optical components (e.g. transmitter, receiver, analyzer).

(b) Design and equip each pollutant concentration or CO_2 or O_2 monitor to allow daily determinations of calibration error (positive or negative) at the zero- and mid- or high-level concentrations specified in section 5.2 of this appendix.

2.2.2 Flow Monitors

Design all flow monitors to meet the applicable performance specifications.

2.2.2.1 Calibration Error Test

Design and equip each flow monitor to allow for a daily calibration error test consisting of at least two reference values: Zero to 20 percent of span or an equivalent reference value (*e.g.,* pressure pulse or electronic signal) and 50 to 70 percent of span. Flow monitor response, both before and after any adjustment, must be capable of being recorded by the data acquisition and handling system. Design each flow monitor to allow a daily calibration error test of the entire flow monitoring system, from and including the probe tip (or equivalent) through and including the data acquisition and handling system, or the flow monitoring system from and including the transducer through and including the data acquisition and handling system.

2.2.2.2 Interference Check

(a) Design and equip each flow monitor with a means to ensure that the moisture expected to occur at the monitoring location does not interfere with the proper functioning of the flow monitoring system. Design and equip each flow monitor with a means to detect, on at least a daily basis, pluggage of each sample line and sensing port, and malfunction of each resistance temperature detector (RTD), transceiver or equivalent.

(b) Design and equip each differential pressure flow monitor to provide an automatic, periodic back purging (simultaneously on both sides of the probe) or equivalent method of sufficient force and frequency to keep the probe and lines sufficiently free of obstructions on at least a daily basis to prevent velocity sensing interference, and a means for detecting leaks in the system on at least a quarterly basis (manual check is acceptable).

(c) Design and equip each thermal flow monitor with a means to ensure on at least a daily basis that the probe remains sufficiently clean to prevent velocity sensing interference.

(d) Design and equip each ultrasonic flow monitor with a means to ensure on at least a daily basis that the transceivers remain sufficiently clean (*e.g.,* backpurging system) to prevent velocity sensing interference.

Appendix A to Part 75 [Amended]

49. Appendix A to part 75 is amended by:

a. Revising section heading and text of section 3.3.1;

b. Revising paragraph (b) of section 3.3.2;

c. In section heading 3.3.3 by removing the words ''Pollutant Concentration'';

d. Revising the second sentence of section 3.3.3;

e. Revising the section heading and text of section 3.3.4;

f. Revising the second sentence of section 3.3.6; and

g. Revising paragraph (b) of section 3.3.7.

The revisions and additions read as follows:

3. Performance Specifications

* * * * *

3.3 Relative Accuracy

3.3.1 Relative Accuracy for SO_2 Monitors

(a) The relative accuracy for SO_2 pollutant concentration monitors shall not exceed 10.0 percent except as provided in this section.

(b) For affected units where the average of the reference method measurements of SO_2 concentration during the relative accuracy test audit is less than or equal to 250.0 ppm, the difference between the mean value of the monitor measurements and the reference method mean value shall not exceed ±15.0 ppm, wherever the relative accuracy specification of 10.0 percent is not achieved.

3.3.2 Relative Accuracy for NO_X-Diluent Continuous Emission Monitoring Systems

* * * * *

(b) For affected units where the average of the reference method measurements of NO_X emission rate during the relative accuracy test audit is less than or equal to 0.200 lb/mmBtu, the difference between the mean value of the continuous emission monitoring system measurements and the reference method mean value shall not exceed ±0.020 lb/mmBtu, wherever the relative accuracy specification of 10.0 percent is not achieved.

3.3.3 Relative Accuracy for CO_2 and O_2 Monitors

* * * The relative accuracy test results are also acceptable if the difference between the mean value of the CO_2 or O_2 monitor measurements and the corresponding reference method measurement mean value, calculated using equation A–7 of this appendix, does not exceed ± 1.0 percent CO_2 or O_2.

3.3.4 Relative Accuracy for Flow Monitors

(a) The relative accuracy of flow monitors shall not exceed 10.0 percent at any load (or operating) level at which a RATA is performed (i.e., the low, mid, or high level, as defined in section 6.5.2.1 of this appendix).

(b) For affected units where the average of the flow reference method measurements of gas velocity at a particular load (or operating) level of the relative accuracy test audit is less than or equal to 10.0 fps, the difference between the mean value of the flow monitor velocity measurements and the reference method mean value in fps at that level shall not exceed ± 2.0 fps, wherever the 10.0 percent relative accuracy specification is not achieved.

* * * * *

3.3.6 Relative Accuracy for Moisture Monitoring Systems

* * * The relative accuracy test results are also acceptable if the difference between the mean value of the reference method measurements (in percent H_2O) and the corresponding mean value of the moisture monitoring system measurements (in percent H_2O), calculated using Equation A–7 of this appendix does not exceed ± 1.5 percent H_2O.

3.3.7 Relative Accuracy for NO_X Concentration Monitoring Systems

* * * * *

(b) The relative accuracy for NO_X concentration monitoring systems shall not exceed 10.0 percent. Alternatively, for affected units where the average of the reference method measurements of NO_X concentration during the relative accuracy test audit is less than or equal to 250.0 ppm, the difference between the mean value of the continuous emission monitoring system measurements and the reference method mean value shall not exceed ± 15.0 ppm, wherever the 10.0 percent relative accuracy specification is not achieved.

* * * * *

Appendix A to Part 75 [Amended]

50. Appendix A to part 75 is amended by:

a. In the first paragraph of section 4, by adding a new second sentence; and

b. In paragraph (3) of section 4, adding the words ''the appropriate'' before the word ''units'', removing the words ''of the standard'', and adding the word ''e.g.,'' before the words ''lb/hr''.

The revisions and additions read as follows:

4. Data Acquisition and Handling Systems

* * * These systems also shall have the capability of interpreting and converting the individual output signals from an SO_2 pollutant concentration monitor, a flow monitor, a CO_2 monitor, a NO_X pollutant concentration monitor, and a NO_X-diluent continuous emission monitoring system to produce a continuous readout of pollutant emission rates or pollutant mass emissions

(as applicable) in the appropriate units (e.g., lb/hr, lb/mmBtu, tons/hr).

* * * * *

Appendix A to Part 75 [Amended]

51. Appendix A to part 75 is amended by:

a. In the first sentence of paragraph (a) of section 6.2 by adding the word ''conditional'' before the words ''data validation procedures'';

b. In section 6.3.1 by adding a new first sentence, by revising the word ''Measure'' in the new second sentence to read ''In all other cases, measure'', and by removing the word ''extended'' in the new third sentence;

c. In the first sentence of paragraph (a) of section 6.3.1 by adding the word ''conditional'' before the words ''data validation procedures'';

d. In section 6.3.2 by adding a new first sentence, by revising the word ''Perform'' in the new second sentence to read ''In all other cases, perform'', and by removing the word ''extended'' before the words ''unit outages'' in the new fifth sentence;

e. In the first sentence of paragraph (a) of section 6.3.2 by adding the word ''conditional'' before the words ''data validation procedures'';

f. Adding a new section 6.3.3;

g. In the first sentence of paragraph (a) of section 6.4 by adding the word ''conditional'' before the words ''data validation procedures'';

h. In the first sentence of section 6.5 by adding the word ''and'' after the words ''heat input,'' and by removing the words ''and each SO_2-diluent continuous emission monitoring system'';

i. Revising paragraphs (a) and (c) of section 6.5;

j. In paragraph (b) of section 6.5 by adding the words ''(or operating)'' after the word ''load'';

k. In the first sentence of paragraph (f)(1) of section 6.5 by adding the word ''conditional'' before the words ''data validation procedures'';

l. In the second sentence of paragraph (g) of section 6.5 by removing the words ''SO_2-diluent'';

m. Revising paragraph (a) of section 6.5.1 and paragraph (a) of section 6.5.2;

n. In paragraph (b) of section 6.5.2 by revising the words ''section 6.5.2.1'' to read ''section 6.5.2.1(d)'';

o. In paragraph (c) of section 6.5.2 by adding the words ''(or three operating levels)'' after the word ''level(s)'', and by adding the words ''or (e)'' after the words ''paragraph (b)'';

p. In paragraph (d) of section 6.5.2 by adding the words ''(or operating levels)'' after the word ''level(s)'';

q. Adding a new paragraph (e) to section 6.5.2;

r. In section heading 6.5.2.1 by adding the words ''(or Operating)'' after the words ''Normal Load'';

s. Revising paragraph (a) of section 6.5.2.1;

t–v. In the first sentence of paragraph (b) of section 6.5.2.1 by revising the words ''30.0 to 60.0 percent'' to read '' >30.0 percent, but ≤60.0 percent'' and revising the words ''60.0 to 100.0 percent'' to read '' >60.0 percent'';

w. Revising paragraphs (c) and (d) of section 6.5.2.1;

x. Revising the first sentence of paragraph (e) of section 6.5.2.1;

y. Revising section 6.5.2.2 section heading and text;

z. Removing and reserving section 6.5.3;

aa. In section 6.5.6 by removing the third sentence;

bb. In paragraph (b)(2) of section 6.5.6 by revising the number ''1.0'' to read ''1.2'';

cc. Adding paragraph (b)(5) to section 6.5.6;

dd. In the first sentence of paragraph (a) of sections 6.5.6.1 and 6.5.6.2 by revising the words ''normal load'' to read ''the normal load level (or normal operating level)'';

ee. In paragraph (c) of section 6.5.6.3 by removing the words ''§ 75.56(a)(7) or'' and the words '', as applicable'';

ff. In paragraph (a) of section 6.5.7 by removing the words ''or SO_2-diluent'' in the fourth sentence, by adding one sentence before, and two sentences after, the ninth sentence, and by removing the words ''§ 75.56(a)(5)(ix) and'' from the next to last sentence; and

gg. In section 6.5.10 by adding a comma after the number ''7D'', and by adding a new sentence to the end of the paragraph.

The revisions and additions read as follows:

6. Certification Tests and Procedures

* * * * *

6.3 7–Day Calibration Error Test

6.3.1 Gas Monitor 7-day Calibration Error Test

The following monitors and ranges are exempted from the 7-day calibration error test requirements of this part: The SO_2, NO_X, CO_2 and O_2 monitors installed on peaking units (as defined in § 72.2 of this chapter); and any SO_2 or NO_X measurement range with a span value of 50 ppm or less. * * *

* * * * *

6.3.2 Flow Monitor 7-day Calibration Error Test

Flow monitors installed on peaking units (as defined in § 72.2 of this chapter) are exempted from the 7-day calibration error test requirements of this part. * * *

* * * * *

6.3.3 For gas or flow monitors installed on peaking units, the exemption from performing the 7-day calibration error test applies as long as the unit continues to meet the definition of a peaking unit in § 72.2 of this chapter. However, if at the end of a particular calendar year or ozone season, it is determined that peaking unit status has been lost, the owner or operator shall perform a diagnostic 7-day calibration error test of each monitor installed on the unit, by no later than December 31 of the following calendar year.

* * * * *

6.5 *Relative Accuracy and Bias Tests (General Procedures)*

* * * * *

(a) Except as provided in § 75.21(a)(5), perform each RATA while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is a normal primary or backup fuel for that unit (for some units, more than one type of fuel may be considered normal, e.g., a unit that combusts gas or oil on a seasonal basis). For units that co-fire fuels as the predominant mode of operation, perform the RATAs while co-firing. When relative accuracy test audits are performed on continuous emission monitoring systems installed on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts.

* * * * *

(c) For monitoring systems with dual ranges, perform the relative accuracy test on the range normally used for measuring emissions. For units with add-on SO_2 or NO_X controls that operate continuously rather than seasonally, or for units that need a dual range to record high concentration ''spikes'' during startup conditions, the low range is considered normal. However, for some dual span units (e.g., for units that use fuel switching or for which the emission controls are operated seasonally), provided that both monitor ranges are connected to a common probe and sample interface, either of the two measurement ranges may be considered normal; in such cases, perform the RATA on the range that is in use at the time of the scheduled test. If the low and high measurement ranges are connected to separate sample probes and interfaces, RATA testing on both ranges is required.

* * * * *

6.5.1 Gas Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 pollutant concentration monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X-diluent continuous emission monitoring system, and each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), at the normal load level or normal operating level for the unit (or combined units, if common stack), as defined

in section 6.5.2.1 of this appendix. If two load levels or operating levels have been designated as normal, the RATAs may be done at either load level.

* * * * *

6.5.2 Flow Monitor RATAs (Special Considerations)

(a) Except as otherwise provided in paragraph (b) or (e) of this section, perform relative accuracy test audits for the initial certification of each flow monitor at three different exhaust gas velocities (low, mid, and high), corresponding to three different load levels or operating levels within the range of operation, as defined in section 6.5.2.1 of this appendix. For a common stack/duct, the three different exhaust gas velocities may be obtained from frequently used unit/load or operating level combinations for the units exhausting to the common stack. Select the three exhaust gas velocities such that the audit points at adjacent load or operating levels (i.e., low and mid or mid and high), in megawatts (or in thousands of lb/hr of steam production or in ft/sec, as applicable), are separated by no less than 25.0 percent of the range of operation, as defined in section 6.5.2.1 of this appendix.

* * * * *

(e) For flow monitors installed on units that do not produce electrical or thermal output, the flow RATAs for initial certification or recertification may be done at fewer than three operating levels, if:

(1) The owner or operator provides a technical justification in the hardcopy portion of the monitoring plan for the unit required under § 75.53(e)(2), demonstrating that the unit operates at only one level or two levels during normal operation (excluding unit startup and shutdown). Appropriate documentation and data must be provided to support the claim of single-level or two-level operation; and

(2) The justification provided in paragraph (e)(1) of this section is deemed to be acceptable by the permitting authority.

6.5.2.1 Range of Operation and Normal Load (or Operating) Level(s)

(a) The owner or operator shall determine the upper and lower boundaries of the ''range of operation'' as follows for each unit (or combination of units, for common stack configurations) that uses CEMS to account for its emissions and for each unit that uses the optional fuel flow-to-load quality assurance test in section 2.1.7 of Appendix D to this part:

(1) For affected units that produce electrical output (in megawatts) or thermal output (in klb/hr of steam production), the lower boundary of the range of operation of a unit shall be the minimum safe, stable loads for any of the units discharging through the stack. Alternatively, for a group of frequently-operated units that serve a common stack, the sum of the minimum safe, stable loads for the individual units may be used as the lower boundary of the range of operation. The upper boundary of the range of operation of a unit shall be the maximum sustainable load. The ''maximum sustainable load'' is the higher of either: the nameplate or rated capacity of the unit, less any physical or regulatory limitations or other deratings; or the highest sustainable load, based on at least four quarters of representative historical operating data. For common stacks, the maximum sustainable load is the sum of all of the maximum sustainable loads of the individual units discharging through the stack, unless this load is unattainable in practice, in which case use the highest sustainable combined load for the units that discharge through the stack. Based on at least four quarters of representative historical operating data. The load values for the unit(s) shall be expressed either in units of megawatts of thousands of lb/hr of steam load; or

(2) For affected units that do not produce electrical or thermal output, the lower boundary of the range of operation shall be the minimum expected flue gas velocity (in ft/sec) during normal, stable operation of the unit. The upper boundary of the range of operation shall be the maximum potential flue gas velocity (in ft/sec) as defined in section 2.1.4.1 of this appendix. The minimum expected and maximum potential velocities may be derived from the results of reference method testing or by using Equation A–3a or A–3b (as applicable) in section 2.1.4.1 of this appendix. If Equation A–3a or A–3b is used to determine the minimum expected velocity, replace the word ''maximum'' with the word ''minimum'' in the definitions of ''MPV,'' ''H_f,'' ''% O_{2d},'' and ''% H_2O,'' and replace the word ''minimum'' with the word ''maximum'' in the definition of ''CO_{2d}.'' Alternatively, 0.0 ft/sec may be used as the lower boundary of the range of operation.

* * * * *

(c) Units that do not produce electrical or thermal output are exempted from the requirements of this paragraph, (c). The owner or operator shall identify, for each affected unit or common stack (except for peaking units), the ''normal'' load level or levels (low, mid or high), based on the operating history of the unit(s). To identify the normal load level(s), the owner or operator shall, at a minimum, determine the relative number of operating hours at each of the three load levels, low, mid and high over the past four representative operating quarters. The owner or operator shall determine, to the nearest 0.1 percent, the percentage of the time that each load level (low, mid, high) has been used during that time period. A summary of the data used for this determination and the calculated results shall be kept on-site in a format suitable for inspection. For new units or newly-affected units, the data analysis in this paragraph may be based on fewer than four quarters of data if fewer than four representative quarters of historical load data are available. Or, if no historical load data are available, the owner or operator may designate the normal load based on the expected or projected manner of operating the unit. However, in either case, once four quarters of representative data become available, the historical load analysis shall be repeated.

(d) Determination of normal load (or operating level)

(1) Based on the analysis of the historical load data described in paragraph (c) of this section, the owner or operator shall, for units that produce electrical or thermal output, designate the most frequently used load level as the normal load level for the unit (or combination of units, for common stacks). The owner or operator may also designate the second most frequently used load level as an additional normal load level for the unit or stack. For peaking units, normal load designations are unnecessary; the entire operating load range shall be considered normal. If the manner of operation of the unit changes significantly, such that the designated normal load(s) or the two most frequently used load levels change, the owner or operator shall repeat the historical load analysis and shall redesignate the normal load(s) and the two most frequently used load levels, as appropriate. A minimum of two representative quarters of historical load data are required to document that a change in the manner of unit operation has occurred. Update the electronic monitoring plan whenever the normal load level(s) and the two most frequently-used load levels are redesignated.

(2) For units that do not produce electrical or thermal output, the normal operating level(s) shall be determined using sound engineering judgment, based on knowledge of the unit and operating experience with the industrial process.

(e) The owner or operator shall report the upper and lower boundaries of the range of operation for each unit (or combination of units, for common stacks), in units of megawatts or thousands of lb/hr of steam production or ft/sec (as applicable), in the electronic quarterly report required under § 75.64. * * *

6.5.2.2 Multi-Load (or Multi-Level) Flow RATA Results

For each multi-load (or multi-level) flow RATA, calculate the flow monitor relative accuracy at each operating level. If a flow monitor relative accuracy test is failed or aborted due to a problem with the monitor on any level of a 2-level (or 3-level) relative accuracy test audit, the RATA must be repeated at that load (or operating) level. However, the entire 2-level (or 3-level) relative accuracy test audit does not have to be repeated unless the flow monitor polynomial coefficients or K-factor(s) are changed, in which case a 3-level RATA is required (or, a 2-level RATA, for units demonstrated to operate at only two levels, under section 6.5.2(e) of this appendix).

6.5.3 [Reserved]

* * * * *

6.5.6 Reference Method Traverse Point Selection

* * * * *

(b) * * *

(5) If Method 7E is used as the reference method for the RATA of a NO_X CEMS installed on a combustion turbine, the reference method measurements may be made at the sampling points specified in section 6.1.2 of Method 20 in appendix A to part 60 of this chapter.

* * * * *

6.5.7 Sampling Strategy

(a) * * * Also, allow sufficient measurement time to ensure that stable temperature readings are obtained at each traverse point, particularly at the first measurement point at each sample port, when a probe is moved sequentially from port-to-port. * * * Alternatively, moisture measurements for molecular weight determination may be performed before and after a series of flow RATA runs at a particular load level (low, mid, or high), provided that the time interval between the two moisture measurements does not exceed three hours. If this option is selected, the results of the two moisture determinations shall be averaged arithmetically and applied to all RATA runs in the series. * * *

* * * * *

6.5.10 Reference Methods

* * * Notwithstanding these requirements, Method 20 may be used as the reference method for relative accuracy test audits of NO_X monitoring systems installed on combustion turbines.

Appendix A to part 75 [Amended]

52. Appendix A to part 75 is amended by:

a. In section heading 7.3 by revising the words ''SO_2-Diluent Continuous Emission'' to read ''O_2 Monitors, NO_X Concentration'';

b. Revising the first sentence of section 7.3;

c. Revising the variable

$$\sum_{i=1}^{n}$$

in the list of defined variables for Eq. A–7 to read

$$\text{“}\sum_{i=1}^{n} di\text{”}$$

and removing the final sentence of section 7.3.1;

d. In the section heading and text of section 7.4 by revising the word ''NO_X'' to read ''NO_X-diluent'';

e. In section heading 7.4.2 by removing the words ''(Monitoring System)'';

f. In the second sentence of section 7.6.1 by adding the words ''or NO_X'' after both occurrences of the word ''SO_2'' and, in the last sentence, by revising the word'' NO_X'' to read ''NO_X-diluent'';

g. Adding a new paragraph (g) to section 7.6.5;

h. In paragraph (a) of section 7.7 by removing the fourth sentence;

i. Revising paragraph (b) of section 7.7;

j. In the variable ''$(\text{Heat Input})_{avg}$'' under Eq. A–13a in paragraph (c) of section 7.7 by adding a second and third sentence to the definition;

k. In paragraph (d) of section 7.7 by adding the words ''(i.e., the arithmetic average of the diluent gas concentrations for all clock hours in which a RATA run was performed)'' to the end of the sentence;

l. In section 7.8 by designating the existing text as paragraph (a), removing the first sentence, adding the words ''and section 2.2.5 of appendix B to this part'' to the end of the second sentence, and adding a new paragraph (b); and

m. Revising Figure 6.

The revisions and additions read as follows:

7. Calculations

* * * * *

7.3 Relative Accuracy for SO_2 and CO_2 Pollutant Concentration Monitors, O_2 Monitors, NO_X Concentration Monitoring Systems, and Flow Monitors

Analyze the relative accuracy test audit data from the reference method tests for SO_2 and CO_2 pollutant concentration monitors, O_2 monitors used only for heat input rate determination, NO_X concentration monitoring systems used to determine NO_X mass emissions under subpart H of this part, and flow monitors using the following procedures.* * *

* * * * *

7.6 Bias Test and Adjustment Factor

* * * * *

7.6.5 Bias Adjustment

* * * * *

(g) For units that do not produce electrical or thermal output, the provisions of paragraphs (a) through (f) of this section apply, except that the terms, ''single-load'', ''2-load'', ''3-load'', and ''load level'' shall be replaced, respectively, with the terms, ''single-level'', ''2-level'', ''3-level'', and ''operating level''.

7.7 Reference Flow-to-Load Ratio or Gross Heat Rate

* * * * *

(b) In Equation A–13, for a common stack, determine L_{avg} by summing, for each RATA run, the operating loads of all units discharging through the common stack, and then taking the arithmetic average of the summed loads. For a unit that discharges its emissions through multiple stacks, either determine a single value of Q_{ref} for the unit or a separate value of Q_{ref} for each stack. In the former case, calculate Q_{ref} by summing, for each RATA run, the volumetric flow rates through the individual stacks and then taking the arithmetic average of the summed RATA run flow rates. In the latter case, calculate the value of Q_{ref} for each stack by taking the arithmetic average, for all RATA runs, of the flow rates through the stack. For a unit with a multiple stack discharge configuration consisting of a main stack and a bypass stack (e.g., a unit with a wet SO_2 scrubber), determine Q_{ref} separately for each stack at the time of the normal load flow RATA. Round off the value of R_{ref} to two decimal places.

(c) * * *

Where:

* * *

$(\text{Heat Input})_{avg}$=* * * For multiple stack configurations, if the reference GHR value is determined separately for each stack, use the hourly heat input measured at each stack. If the reference GHR is determined at the unit level, sum the hourly heat inputs measured at the individual stacks.

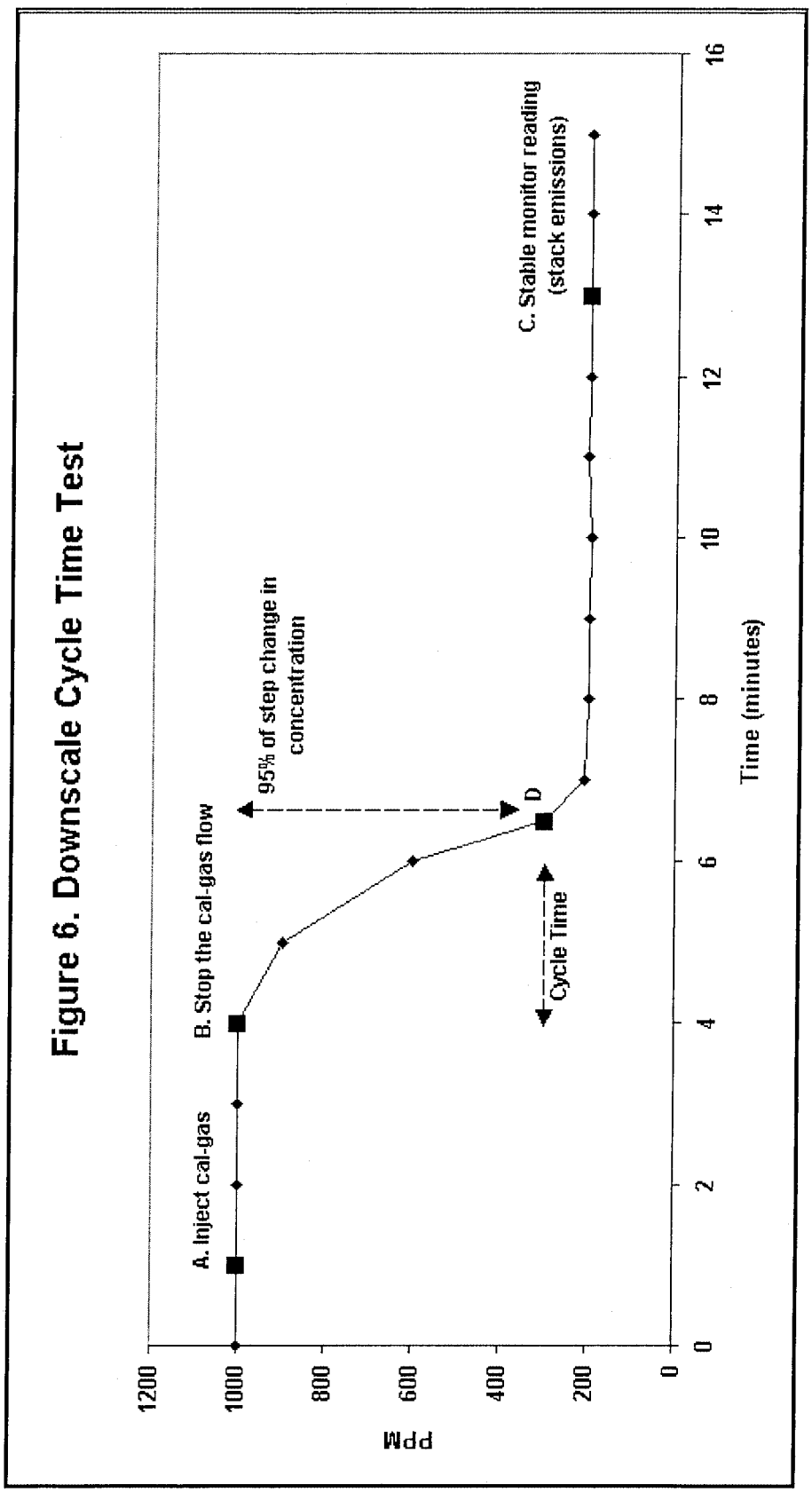
* * * * *

7.8 Flow-to-Load Test Exemptions

* * * * *

(b) Units that do not produce electrical output (in megawatts) or thermal output (in klb of steam per hour) are exempted from the flow-to-load ratio test requirements of section 7.7 of this appendix and section 2.2.5 of appendix B to this part.

* * * * *



* * * * *

53. Appendix B to part 75 is amended by:

a. Adding a fourth sentence to section 1;

b. Removing the word ''and'' before the words ''section 2.1.5.1'' in the second sentence of section 1.3.1; and

c. Removing the words ''unit manufacturer's'' in the first sentence of section 1.3.6.

The revisions and additions read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

1. Quality Assurance/Quality Control Program

* * * Electronic storage of the information in the QA/QC plan is permissible, provided that the information can be made available in hardcopy upon request during an audit.

* * * * *

Appendix B to Part 75 [Amended]

54. Appendix B to Part 75 is amended by:

a. In paragraph (a) of section 2.1.4 by removing the words ''(or exceeds 10 ppm, for span values <200 ppm)'' in the first sentence, by adding the words ''of appendix A to this part'' after ''Equation A–6'' in the second sentence, and by adding a new third sentence after the second sentence;

b. In the first sentence of section 2.2.1 by revising the word ''Perform'' to read ''Unless a particular monitor (or monitoring range) is exempted under this paragraph or under section 6.2 of appendix A to this part, perform'';

c. In section 2.2.2, by revising the words ''section 2.2.3(f)'' to read ''section 2.2.3(g)'';

d. In paragraph (c) of section 2.2.3 by adding a third sentence;

e. In the second sentence of paragraph (e) of section 2.2.3 by removing the words ''or SO_2-diluent'';

f. In paragraph (b) of section 2.2.4 by adding the words ''first unit operating'' before the words ''hour following'' in the first sentence;

g. In paragraph (a) of section 2.2.5 by removing the first sentence, revising the words ''by an approved petition in accordance with'' in the second sentence to read ''from the flow-to-load ratio test under'', and by adding a final sentence before Eq. B–1;

h. Revising the third sentence of paragraph (a)(1) of section 2.2.5;

i. In paragraph (a)(3) of section 2.2.5 by adding the word ''rate'' after the words ''heat input'';

j. In paragraph (a)(4) of section 2.2.5 by adding the word ''acceptable'' after each occurrence of the number ''168'', and by adding in the third sentence the words ''(i.e., at loads within ± 10 percent of L_{avg})'' after the word ''rates'';

k. Adding a sentence at the end of paragraph (b)(4) of section 2.2.5;

l. Revising the introductory text of paragraph (c) of section 2.2.5;

m. In paragraph (c)(1) of section 2.2.5 by removing the semicolon and adding in its place a period after the word ''sub-bituminous)'' and by adding a new third sentence;

n. In paragraph (c)(8) of section 2.2.5 by removing the second sentence and adding two new sentences in its place;

o. In the first sentence of the introductory paragraph to section 2.2.5.1 by revising the words ''two weeks'' to read ''14 unit operating days'';

p. Revising paragraph (b) of section 2.2.5.1;

q. Revising section 2.2.5.2;

r. In paragraph (a) of section 2.2.5.3 by adding the words ''either the hour in which the abbreviated flow-to-load test is passed, or'' after the word ''until'' in the second sentence, and by revising the word ''The'' at the beginning of the third sentence to read ''If the latter option is selected, the'';

s. In the second sentence of paragraph (b) of section 2.2.5.3 by revising the number ''5.0'' to read ''10.0'';

t. In paragraph (c) of section 2.2.5.3 by adding the words ''(if applicable)'' after the words ''flow-to-load test'' in the second sentence and after the words ''flow monitor'' in the third sentence;

u. Removing and reserving paragraphs (b) and (g) of section 2.3.1.2;

v. Removing the words ''On and after January 1, 2000,'' and capitalizing the letter ''t'' in the first instance of ''the'' in paragraph (c) of section 2.3.1.2;

w. In paragraph (d) of section 2.3.1.2 by adding the words '', as measured by the reference method during the RATA'' after the words '' < 10.0 fps'' and by removing the words ''(10.0 percent if prior to January 1, 2000)'';

x. In paragraph (e) of section 2.3.1.2 by adding the words ''reference method'' before the word ''concentrations'', and by adding the words '') during the RATA'' after the words ''250 ppm'';

y. In paragraph (f) of section 2.3.1.2 by adding the words ''measured by the reference method during the RATA'' after the words ''average NO_X emission rate'';

z. In section heading 2.3.1.3 by adding the words ''(or Operating)'' after the words ''RATA Load'';

aa. In paragraph (a) of section 2.3.1.3 by adding the words ''(or operating level)'' after each instance of the words ''load level'', adding the words ''(or operating levels)'' after the words ''load levels'', and by revising the words ''section 6.5.2.1'' to read ''section 6.5.2.1(d)'';

bb. Revising paragraphs (b) and (c) of section 2.3.1.3;

cc. In paragraph (c) of section 2.3.2 by adding a new third sentence;

dd. In paragraph (d) of section 2.3.2 by adding the words ''(or single level)'' after the word ''single-load'' and adding the words ''(or multiple level)'' after the word ''multiple-load'', and in paragraphs (d) and (f) of section 2.3.2 by adding the words ''(or operating levels(s))'' after the words ''load level(s)'', the words ''(or 3-level)'' after the words ''3-load'', and the words '', except as otherwise provided in section 2.3.1.3(c)(5) of this appendix'' immediately before the period at the end of each paragraph;

ee. By revising paragraph (e) of section 2.3.2;

ff. Revising paragraph (a) of section 2.3.3;

gg. Revising paragraph (b) of section 2.4;

hh. Revising footnote 2 of Figure 1 to Appendix B of Part 75; and

ii. In Figure 2 to Appendix B of Part 75 by removing the entire entry for ''Flow (Phase I)'' and revising the phrase ''Flow (Phase II)'' in the first column to read ''Flow''.

The revisions and additions read as follows:

2. Frequency of Testing

* * * * *

2.1 Daily Assessments

* * * * *

2.1.4 Data Validation

(a) * * * In addition, an SO_2 or NO_X monitor for which the calibration error exceeds 5.0 percent of the span value shall not be considered out-of-control if |R–A| in Equation A–6 does not exceed 5.0 ppm (for span values ≤50 ppm), or if |R–A| does not exceed 10.0 ppm (for span values > 50 ppm, but ≤ 200 ppm). * * *

* * * * *

2.2 Quarterly Assessments

* * * * *

2.2.3 Data Validation

* * * * *

(c) * * * If a routine daily calibration error test is performed and passed just prior to a linearity test (or during a linearity test period) and a mathematical correction factor is automatically applied by the DAHS, the correction factor shall be applied to all subsequent data recorded by the monitor, including the linearity test data.

* * * * *

2.2.5 Flow-to-Load Ratio or Gross Heat Rate Evaluation

(a) * * * Alternatively, for the reasons stated in paragraphs (c)(1) through (c)(6) of this section, the owner or operator may exclude from the data analysis certain hours within ±10.0 percent of L_{avg} and may calculate R_h values for only the remaining hours.

* * * * *

(1) * * * For a unit that discharges its emissions through multiple stacks or that monitors its emissions in multiple

breechings, Q_h will be either the combined hourly volumetric flow rate for all of the stacks or ducts (if the test is done on a unit basis) or the hourly flow rate through each stack individually (if the test is performed separately for each stack). * * *

* * * * *

(b) * * *

(4) * * * If E_f is above these limits, the owner or operator shall either: implement Option 1 in section 2.2.5.1 of this appendix; perform a RATA in accordance with Option 2 in section 2.2.5.2 of this appendix; or (if applicable) re-examine the hourly data used for the flow-to-load or GHR analysis and recalculate E_f, after excluding all non-representative hourly flow rates, as provided in paragraph (c) of this section.

(c) *Recalculation of E_f.* If the owner or operator did not exclude any hours within ±10 percent of L_{avg} from the original data analysis and chooses to recalculate E_f, the flow rates for the following hours are considered non-representative and may be excluded from the data analysis:

(1) * * * Also, for units that co-fire different types of fuels, if the reference RATA was done while co-firing, then hours in which a single fuel was combusted may be excluded from the data analysis as different fuel hours (and vice-versa for co-fired hours, if the reference RATA was done while combusting only one type of fuel);

* * * * *

(8) * * * If, however, E_f is still above the applicable limit, data from the monitor shall be declared out-of-control, beginning with the first unit operating hour following the quarter in which E_f exceeded the applicable limit. Alternatively, if a probationary calibration error test is performed and passed according to § 75.20(b)(3)(ii), data from the monitor may be declared conditionally valid following the quarter in which E_f exceeded the applicable limit. * * *

2.2.5.1 Option 1

* * * * *

(b) If a problem with the flow monitor is identified through the investigation (including the need to re-linearize the monitor by changing the polynomial coefficients or K factor(s)), data from the monitor are considered invalid back to the first unit operating hour after the end of the calendar quarter for which E_f was above the applicable limit. If the option to use conditional data validation was selected under section 2.2.5(c)(8) of this appendix, all conditionally valid data shall be invalidated, back to the first unit operating hour after the end of the calendar quarter for which E_f was above the applicable limit. Corrective actions shall be taken. All corrective actions (*e.g.,* non-routine maintenance, repairs, major component replacements, re-linearization of the monitor, etc.) shall be documented in the operation and maintenance records for the monitor. The owner or operator then shall either complete the abbreviated flow-to-load test in section 2.2.5.3 of this appendix, or, if the corrective action taken has required relinearization of the flow monitor, shall perform a 3-load RATA. The conditional data validation procedures in § 75.20(b)(3) may be applied to the 3-load RATA.

2.2.5.2 Option 2

Perform a single-load RATA (at a load designated as normal under section 6.5.2.1 of appendix A to this part) of each flow monitor for which E_f is outside of the applicable limit. If the RATA is passed hands-off, in accordance with section 2.3.2(c) of this appendix, no further action is required and the out-of-control period for the monitor ends at the date and hour of completion of a successful RATA, unless the option to use conditional data validation was selected under section 2.2.5(c)(8) of this appendix. In that case, all conditionally valid data from the monitor are considered to be quality-assured, back to the first unit operating hour following the end of the calendar quarter for which the E_f value was above the applicable limit. If the RATA is failed, all data from the monitor shall be invalidated, back to the first unit operating hour following the end of the calendar quarter for which the E_f value was above the applicable limit. Data from the monitor remain invalid until the required RATA has been passed. Alternatively, following a failed RATA and corrective actions, the conditional data validation procedures of § 75.20(b)(3) may be used until the RATA has been passed. If the corrective actions taken following the failed RATA included adjustment of the polynomial coefficients or K-factor(s) of the flow monitor, a 3-level RATA is required, except as otherwise specified in section 2.3.1.3 of this appendix.

* * * * *

2.3 Semiannual and Annual Assessments

* * * * *

2.3.1 Relative Accuracy Test Audit (RATA)

* * * * *

2.3.1.3 RATA Load (or Operating) Levels and Additional RATA Requirements

* * * * *

(b) For flow monitors installed on peaking units and bypass stacks, and for flow monitors that qualify to perform only single-level RATAs under section 6.5.2(e) of appendix A to this part, all required semiannual or annual relative accuracy test audits shall be single-load (or single-level) audits at the normal load (or operating level), as defined in section 6.5.2.1(d) of appendix A to this part.

(c) For all other flow monitors, the RATAs shall be performed as follows:

(1) An annual 2-load (or 2-level) flow RATA shall be done at the two most frequently used load levels (or operating levels), as determined under section 6.5.2.1(d) of appendix A to this part, or (if applicable) at the operating levels determined under section 6.5.2(e) of appendix A to this part. Alternatively, a 3-load (or 3-level) flow RATA at the low, mid, and high load levels (or operating levels), as defined under section 6.5.2.1(b) of appendix A to this part, may be performed in lieu of the 2-load (or 2-level) annual RATA.

(2) If the flow monitor is on a semiannual RATA frequency, 2-load (or 2-level) flow RATAs and single-load (or single-level) flow RATAs at the normal load level (or normal operating level) may be performed alternately.

(3) A single-load (or single-level) annual flow RATA may be performed in lieu of the 2-load (or 2-level) RATA if the results of an historical load data analysis show that in the time period extending from the ending date of the last annual flow RATA to a date that is no more than 21 days prior to the date of the current annual flow RATA, the unit (or combination of units, for a common stack) has operated at a single load level (or operating level) (low, mid, or high), for ≥ 85.0 percent of the time. Alternatively, a flow monitor may qualify for a single-load (or single-level) RATA if the 85.0 percent criterion is met in the time period extending from the beginning of the quarter in which the last annual flow RATA was performed through the end of the calendar quarter preceding the quarter of current annual flow RATA.

(4) A 3-load (or 3-level) RATA, at the low-, mid-, and high-load levels (or operating levels), as determined under section 6.5.2.1 of appendix A to this part, shall be performed at least once every five consecutive calendar years, except for flow monitors that are exempted from 3-load (or 3-level) RATA testing under section 6.5.2(b) or 6.5.2(e) of appendix A to this part.

(5) A 3-load (or 3-level) RATA is required whenever a flow monitor is re-linearized, *i.e.,* when its polynomial coefficients or K factor(s) are changed, except for flow monitors that are exempted from 3-load (or 3-level) RATA testing under section 6.5.2(b) or 6.5.2(e) of appendix A to this part. For monitors so exempted under section 6.5.2(b), a single-load flow RATA is required. For monitors so exempted under section 6.5.2(e), either a single-level RATA or a 2-level RATA is required, depending on the number of operating levels documented in the monitoring plan for the unit.

(6) For all multi-level flow audits, the audit points at adjacent load levels or at adjacent operating levels (*e.g.,* mid and high) shall be separated by no less than 25.0 percent of the ''range of operation,'' as defined in section 6.5.2.1 of appendix A to this part.

* * * * *

2.3.2 Data Validation

* * * * *

(c) * * * If a routine daily calibration error test is performed and passed just prior to a RATA (or during a RATA test period) and a mathematical correction factor is automatically applied by the DAHS, the correction factor shall be applied to all subsequent data recorded by the monitor, including the RATA test data. * * *

* * * * *

(e) For a RATA performed using the option in paragraph (b)(1) or (b)(2) of this section, if the RATA is failed (that is, if the relative accuracy exceeds the applicable specification in section 3.3 of appendix A to this part) or if the RATA is aborted prior to completion due to a problem with the CEMS, then the CEMS is out-of-control and all emission data from the CEMS are invalidated prospectively from the hour in which the RATA is failed or aborted. Data from the CEMS remain invalid until the hour of completion of a subsequent RATA that meets the applicable specification in section 3.3 of appendix A to

this part. If the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through(b)(3)(ix) has been selected, the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B). Note that when a RATA is aborted for a reason other than monitoring system malfunction (*see* paragraph (h) of this section), this does not trigger an out-of-control period for the monitoring system.

* * * * *

2.3.3 RATA Grace Period

(a) The owner or operator has a grace period of 720 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for CEMS installed on common stacks or bypass stacks, 720 consecutive stack operating hours, as defined in § 72.2 of this chapter), in which to complete the required RATA for a particular CEMS whenever:

(1) A required RATA has not been performed by the end of the QA operating quarter in which it is due; or

(2) Five consecutive calendar years have elapsed without a required 3-load flow RATA having been conducted; or

(3) For a unit which is conditionally exempted under § 75.21(a)(7) from the SO_2 RATA requirements of this part, an SO_2 RATA has not been completed by the end of the calendar quarter in which the annual usage of fuel(s) with a sulfur content higher than very low sulfur fuel (as defined in § 72.2 of this chapter) exceeds 480 hours; or

(4) Eight successive calendar quarters have elapsed, following the quarter in which a RATA was last performed, without a subsequent RATA having been done, due either to infrequent operation of the unit(s) or frequent combustion of very low sulfur fuel, as defined in § 72.2 of this chapter (SO_2 monitors, only), or a combination of these factors.

* * * * *

2.4 Recertification, Quality Assurance, RATA Frequency and Bias Adjustment Factors (Special Considerations)

* * * * *

(b) Except as provided in section 2.3.3 of this appendix, whenever a passing RATA of a gas monitor is performed, or a passing 2-load (or 2-level) RATA or a passing 3-load (or 3-level) RATA of a flow monitor is performed (irrespective of whether the RATA is done to satisfy a recertification requirement or to meet the quality assurance requirements of this appendix, or both), the RATA frequency (semi-annual or annual) shall be established based upon the date and time of completion of the RATA and the relative accuracy percentage obtained. For 2-load (or 2-level) and 3-load (or 3-level) flow RATAs, use the highest percentage relative accuracy at any of the loads (or levels) to determine the RATA frequency. The results of a single-load (or single-level) flow RATA may be used to establish the RATA frequency when the single-load (or single-level) flow RATA is specifically required under section 2.3.1.3(b) of this appendix or when the single-load (or single-level) RATA is allowed under section 2.3.1.3(c) of this appendix for a unit that has operated at one load level (or operating level) for ≥ 85.0 percent of the time since the last annual flow RATA. No other single-load (or single-level) flow RATA may be used to establish an annual RATA frequency; however, a 2-load or 3-load (or a 2-level or 3-level) flow RATA may be performed at any time or in place of any required single-load (or single-level) RATA, in order to establish an annual RATA frequency.

* * * * *

Figure 1 to Appendix B of Part 75—Quality Assurance Test Requirements

* * * * *

[2] For flow monitors installed on peaking units, bypass stacks, or units that qualify for single-level RATA testing under section 6.5.2(e) of this appendix, conduct all RATAs at a single, normal load (or operating level). For other flow monitors, conduct annual RATAs at two load levels (or operating levels). Alternating single-load and 2-load (or single-level and 2-level) RATAs may be done if a monitor is on a semiannual frequency. A single-load (or single-level) RATA may be done in lieu of a 2-load (or 2-level) RATA if, since the last annual flow RATA, the unit has operated at one load level (or operating level) for ≥ 85.0 percent of the time. A 3-level RATA is required at least once every five calendar years and whenever a flow monitor is re-linearized, except for flow monitors exempted from 3-level RATA testing under section 6.5.2(b) or 6.5.2(e) of appendix A to this part.

* * * * *

55. Appendix C to part 75 is amended by:

a. In the section heading of section 2 by revising the word ''Load-Based'' to read ''Load-based'' and by adding the words '', NO_X Concentration,'' after the words ''Flow Rate''; and

b. Adding a new section 3.

The revisions and additions read as follows:

Appendix C to Part 75—Missing Data Estimation Procedures

* * * * *

3. Non-load-based Procedure for Missing Flow Rate, NO_X Concentration, and NO_X Emission Rate Data (Optional)

3.1 Applicability

For affected units that do not produce electrical output in megawatts or thermal output in klb/hr of steam, this procedure may be used in accordance with the provisions of this part to provide substitute data for volumetric flow rate (scfh), NO_X emission rate (in lb/mmBtu) from NO_X-diluent continuous emission monitoring systems, and NO_X concentration data (in ppm) from NO_X concentration monitoring systems used to determine NO_X mass emissions.

3.2 Procedure

3.2.1 For each monitored parameter (flow rate, NO_X emission rate, or NO_X concentration), establish at least two, but no more than ten operational bins, corresponding to various operating conditions and parameters (or combinations of these) that affect volumetric flow rate or NO_X emissions. Include a complete description of each operational bin in the hardcopy portion of the monitoring plan required under § 75.53(e)(2), identifying the unique combination of parameters and operating conditions associated with the bin and explaining the relationship between these parameters and conditions and the magnitude of the stack gas flow rate or NO_X emissions. Assign a unique number, 1 through 10, to each operational bin. Examples of conditions and parameters that may be used to define operational bins include unit heat input, type of fuel combusted, specific stages of an industrial process, or (for common stacks), the particular combination of units that are in operation.

3.2.2 In the electronic quarterly report required under § 75.64, indicate for each hour of unit operation the operational bin associated with the NO_X or flow rate data, by recording the number assigned to the bin under section 3.2.1 of this appendix.

3.2.3 The data acquisition and handling system must be capable of properly identifying and recording the operational bin number for each unit operating hour. The DAHS must also be capable of calculating and recording the following information (as applicable) for each unit operating hour of missing flow or NO_X data within each identified operational bin during the shorter of:

(a) The previous 2,160 quality assured monitor operating hours (on a rolling basis), or

(b) All previous quality assured monitor operating hours in the previous 3 years:

3.2.3.1 Average of the hourly flow rates reported by a flow monitor (scfh).

3.2.3.2 The 90th percentile value of hourly flow rates (scfh).

3.2.3.3 The 95th percentile value of hourly flow rates (scfh).

3.2.3.4 The maximum value of hourly flow rates (scfh).

3.2.3.5 Average of the hourly NO_X emission rates, in lb/mmBtu, reported by a NO_X-diluent continuous emission monitoring system.

3.2.3.6 The 90th percentile value of hourly NO_X emission rates (lb/mmBtu).

3.2.3.7 The 95th percentile value of hourly NO_X emission rates (lb/mmBtu).

3.2.3.8 The maximum value of hourly NO_X emission rates, in (lb/mmBtu).

3.2.3.9 Average of the hourly NO_X pollutant concentrations (ppm), reported by a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2).

3.2.3.10 The 90th percentile value of hourly NO_X pollutant concentration (ppm).

3.2.3.11 The 95th percentile value of hourly NO_X pollutant concentration (ppm).

3.2.3.12 The maximum value of hourly NO_X pollutant concentration (ppm).

3.2.4 When a bias adjustment is necessary for the flow monitor and/or the NO_X-diluent continuous emission monitoring system (and/or the NO_X concentration monitoring system), apply the bias adjustment factor to all data values placed in the operational bins.

3.2.5 Calculate all CEMS data averages, maximum values, and percentile values determined by this procedure using bias-adjusted values.

3.2.6 Use the calculated monitor or monitoring system data averages, maximum values, and percentile values to substitute for missing flow rate and NO_X emission rate data (and where applicable, NO_X concentration data) according to the procedures in subpart D of this part.

Appendix D Section 1 [Amended]

56. Appendix D to Part 75 is amended by removing the final sentence of section 1.2.

57. Appendix D to Part 75 is amended by:

a. Revising sections 2.1.2, 2.1.2.1, and 2.1.2.2;

b. Revising the first sentence of section 2.1.4.1;

c. Revising section 2.1.4.3;

d. In section 2.1.5 by revising the words ''calibrated fuel flow rate'' to read ''fuel flow rate measurable by the flowmeter'' in the first sentence, by adding the words ''(orifice, nozzle, and venturi-type flowmeters, only)'' after the words ''by design'' in the second sentence, and by revising the words ''measurement against a NIST-traceable reference method'' in the third sentence to read ''in-line comparison against a reference flowmeter'';

e. In section 2.1.5.4 by revising the words ''using the following'' to read ''in a manner consistent with'';

f. Revising paragraph (c) of section 2.1.6;

g. In paragraph (d) of section 2.1.6 by removing the words ''where applicable,'' before the words ''those procedures'' and '', where applicable'' after the second occurrence of the words ''element inspection'', and by adding ''(if applicable)'' after both occurrences of the words ''test or'';

h. Adding new paragraphs (e) and (f) to section 2.1.6;

i. In paragraph (a) of section 2.1.6.1 by adding the word ''upscale'' after the word ''other'' in the second sentence and by adding a new third sentence;

j. In section heading 2.1.6.2 by revising the words ''and Reporting of'' to read ''for'';

k. In paragraph (a) of section 2.1.6.2 by removing the second and third sentences;

l. Removing and reserving sections 2.1.6.2(b) and 2.1.6.2(c);

m. In the final sentence of section 2.1.6.3 by removing the words ''§ 75.56 or'' and '', as applicable'';

n. In the fourth sentence of paragraph (a) of section 2.1.6.4 by revising the words ''indicates that'' to read ''is failed (if'' and by adding a closing parenthesis after the word ''corroded'';

o. In paragraph (a)(1) of section 2.1.6.4 by adding a new second sentence;

p. In paragraphs (a)(2) and (b)(2) of section 2.1.6.4 by revising the word ''under'' to read '', using'';

q. In paragraph (b) of section 2.1.6.4 by removing the first sentence;

r. In paragraph (b)(1) of section 2.1.6.4 by adding the words ''and, if applicable, the transmitters have been successfully recalibrated'' to the end of the final sentence;

s. In paragraph (c) of section 2.1.6.4 by revising the words ''this period'' to read ''each period of invalid fuel flowmeter data described in paragraph (b) of this section'';

t. In section 2.1.7 by removing each occurrence of the words ''where applicable,'' and ''as applicable,'', by removing the words ''§ 75.54(a) or'', and by adding the words ''(if applicable) a'' and ''(if applicable)'' after the two occurrences of ''test or'', respectively;

u. In paragraph (a) of section 2.1.7.1 by revising the first occurrence of ''i.e.'' to read ''e.g.'', by revising the sixth sentence, and by adding the word ''Arithmetic'' before the word ''average'' in the definitions of the variables ''Q_{base}'' and ''L_{avg}'' under Eq. D–1b;

v. Revising paragraph (b) of section 2.1.7.1;

w. In paragraph (c) of section 2.1.7.1 by adding the words ''average fuel flow rate and the fuel GCV in the'' before the word ''applicable'' in the definition of the variable ''$(\text{Heat Input})_{avg}$'' under Eq. D–1c;

x. Adding a new paragraph (e) to section 2.1.7.1;

y. In paragraph (a) of section 2.1.7.2 by adding a new third sentence;

z. Revising paragraph (b) of section 2.1.7.2;

aa. In the variable for ''$(\text{Heat Input})_h$'' under Eq. D–1e in paragraph (c) of section 2.1.7.2 by adding the words ''hourly fuel flow rate and the fuel GCV in the'' after the words ''using the'';

bb. Revising paragraph (d) of section 2.1.7.2;

cc. Adding a third sentence to paragraph (h) of section 2.1.7.2;

dd. Revising paragraph (a) of section 2.1.7.3;

ee. Adding a second sentence to paragraph (b) of section 2.1.7.3;

ff. In the first sentence of paragraph (a) of section 2.1.7.4 by revising the reference to ''section 2.1.7.2'' to read ''section 2.1.7.2(h)'';

gg. In the final sentence of paragraph (b) of section 2.1.7.4 by adding the word ''fuel'' after the word ''two'' and by adding the words ''(as defined in § 72.2 of this chapter)'' after the word ''quarters'';

hh. Revising Table D–3 in section 2.1.7.5 and Table D–4 in section 2.2;

ii. In section 2.2.4.2 introductory text by adding the words ''and GCV value'' after the words ''Use the sulfur content'' in the fourth sentence, and by revising the reference to ''section 2.2.4.3'' to read ''section 2.2.4.3(c)'';

jj. Revising paragraph (b) of section 2.2.4.2;

kk. In the second sentence of paragraph (c) of section 2.2.4.3 by revising the first and second occurrences of the words ''two following values'' to read, respectively, the words ''following conservative, assumed values'' and ''assumed values'';

ll. Revising paragraph (d) of section 2.2.4.3;

mm. Revising Table D–5 in paragraph (b) of section 2.3;

nn. In section 2.3.1.3 by adding the words ''or Equation D–4 (if daily or hourly fuel sampling is used)'' at the end of the first sentence;

oo. Revising sections 2.3.1.4, 2.3.2.4, and 2.3.6;

pp. Revising section 2.3.2.1.1 and Equation D–1h;

qq. Removing and reserving section 2.3.2.1.2;

rr. Revising sections 2.3.3.1.1 and 2.3.3.2;

ss. In section 2.3.4.3 by adding a new second sentence;

tt. In section 2.3.4.3.1 by revising the fourth sentence;

uu. Revising section 2.3.4.3.2;

vv. Revising paragraph (a) of section 2.3.5;

ww. Adding section 2.3.7;

xx. In section 2.4.1 by removing a reference to ''2.3.3.1,'' in the first sentence, by removing the second sentence and adding two new sentences in its place, and by revising Table D–6;

yy. Revising sections 2.4.2, 2.4.2.1, and 2.4.2.2; adding sections 2.4.2.2.1 and 2.4.2.2.2; revising section 2.4.2.3; and adding sections 2.4.2.3.1 through 2.4.2.3.4; and

zz. In section 2.4.3 by adding a second sentence.

The revisions and additions read as follows:

2. Procedure

2.1 Fuel Flowmeter Measurements

* * * * *

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (as defined in § 72.2). However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of this appendix shall not apply to any unit that is using the provisions of subpart H of this part to monitor,

record, and report NO_X mass emissions under a State or federal NO_X mass emission reduction program, unless both of the following are true: all of the units served by the common pipe are affected units, and all of the units have similar efficiencies. When a fuel flowmeter is installed in a common pipe header, proceed as follows:

2.1.2.1 Measure the fuel flow rate in the common pipe, and combine SO_2 mass emissions (Acid Rain Program units only) for the affected units for recordkeeping and compliance purposes; and

2.1.2.2 Apportion the heat input rate measured at the common pipe to the individual units, using Equation F–21a, F–21b, or F–21d in appendix F to this part.

* * * * *

2.1.4.1 Start-up or Ignition Fuel

For an oil-fired unit that uses gas solely for start-up or burner ignition, a gas-fired unit that uses oil solely for start-up or burner ignition, or an oil-fired unit that uses a different grade of oil solely for start-up or burner ignition, a fuel flowmeter for the start-up fuel is permitted but not required. * * *

* * * * *

2.1.4.3 Emergency Fuel

The designated representative of a unit that is restricted by its Federal, State or local permit to combusting a particular fuel only during emergencies where the primary fuel is not available is exempt from certifying a fuel flowmeter for use during combustion of the emergency fuel. During any hour in which the emergency fuel is combusted, report the hourly heat input to be the maximum rated heat input of the unit for the fuel. Use the maximum potential sulfur content for the fuel (from Table D–6 of this appendix) and the fuel flow rate corresponding to the maximum hourly heat input to calculate the hourly SO_2 mass emission rate, using Equations D–2 through D–4 (as applicable). Alternatively, if a certified fuel flowmeter is available for the emergency fuel, you may use the measured hourly fuel flow rates in the calculations. Also, if daily samples or weekly composite samples (fuel oil, only) of the fuel's total sulfur content, GCV, and (if applicable) density are taken during the combustion of the emergency fuel, as described in section 2.2 or 2.3 of this appendix, the sample results may be used to calculate the hourly SO_2 emissions and heat input rates, in lieu of using maximum potential values. The designated representative shall also provide notice under § 75.61(a)(6) for each period when the emergency fuel is combusted.

* * * * *

2.1.6 Quality Assurance

* * * * *

(c) For orifice-, nozzle-, and venturi-type flowmeters, either perform the required flowmeter accuracy testing using the procedures in section 2.1.5.2 of this appendix or perform a transmitter accuracy test for the initial certification and once every four fuel flowmeter QA operating quarters thereafter. Perform a primary element visual inspection for the initial certification and once every 12 calendar quarters thereafter, according to the procedures in sections 2.1.6.1 through 2.1.6.4 of this appendix for periodic quality assurance.

* * * * *

(e) When accuracy testing of the orifice, nozzle, or venturi meter is performed according to section 2.1.5.2 of this appendix, record the information displayed in Table D–1 in this section. At a minimum, record the overall accuracy results for the fuel flowmeter at the three flow rate levels specified in section 2.1.5.2 of this appendix.

(f) Report the results of all fuel flowmeter accuracy tests, transmitter or transducer accuracy tests, and primary element inspections, as applicable, in the emissions report for the quarter in which the quality assurance tests are performed, using the electronic format specified by the Administrator under § 75.64.

2.1.6.1 Transmitter or Transducer Accuracy Test for Orifice-, Nozzle-, and Venturi-Type Flowmeters

(a) * * * For temperature transmitters, the zero and upscale levels may correspond to fixed reference points, such as the freezing point or boiling point of water.

* * * * *

2.1.6.4 Primary Element Inspection

(a) * * *

(1) * * * If the primary element size is changed, also calibrate the transmitters or transducers, consistent with the new primary element size;

* * * * *

2.1.7 Fuel Flow-to-Load Quality Assurance Testing for Certified Fuel Flowmeters

* * * * *

2.1.7.1 Baseline Flow Rate-to-Load Ratio or Heat Input-to-Load Ratio

(a) * * * For orifice-, nozzle-, and venturi-type fuel flowmeters, if the fuel flow-to-load ratio is to be used as a supplement both to the transmitter accuracy test under section 2.1.6.1 of this appendix and to primary element inspections under section 2.1.6.4 of this appendix, then the baseline data must be obtained after both procedures are completed and no later than the end of the fourth calendar quarter following the calendar quarter in which both procedures were completed. * * *

* * * * *

(b) In Equation D–1b, for a fuel flowmeter installed on a common pipe header, L_{avg} is the sum of the operating loads of all units that received fuel through the common pipe header during the baseline period, divided by the total number of hours of fuel flow rate data collected during the baseline period. For a unit that receives the same type of fuel through multiple pipes, Q_{base} is the sum of the fuel flow rates during the baseline period from all of the pipes, divided by the total number of hours of fuel flow rate data collected during the baseline period. Round off the value of R_{base} to the nearest tenth.

* * * * *

(e) If a unit co-fires different fuels (*e.g.,* oil and natural gas) as its normal mode of operation, the gross heat rate option in paragraph (c) of this section may be used to determine a value of $(GHR)_{base}$, as follows. Derive the baseline data during co-fired hours. Then, use Equation D–1c to calculate $(GHR)_{base}$, making sure that each hourly unit heat input rate used to calculate $(Heat\ Input)_{avg}$ includes the contribution of each type of fuel.

2.1.7.2 Data Preparation and Analysis

(a) * * * Alternatively, the owner or operator may exclude non-representative hours from the data analysis, as described in section 2.1.7.3 of this appendix, prior to calculating the values of R_h.

* * * * *

(b) For a fuel flowmeter installed on a common pipe header, Lh shall be the sum of the hourly operating loads of all units that receive fuel through the common pipe header. For a unit that receives the same type of fuel through multiple pipes, Q_h will be the sum of the fuel flow rates from all of the pipes. Round off each value of R_h to the nearest tenth.

* * * * *

(d) Evaluate the calculated flow rate-to-load ratios (or gross heat rates) as follows.

(1) Perform a separate data analysis for each fuel flowmeter system following the procedures of this section. Base each analysis on a minimum of 168

hours of data. If, for a particular fuel flowmeter system, fewer than 168 hourly flow-to-load ratios (or GHR values) are available, or, if the baseline data collection period is still in progress at the end of the quarter and fewer than four calendar quarters have elapsed since the quarter in which the last successful fuel flowmeter system accuracy test was performed, a flow-to-load (or GHR) evaluation is not required for that flowmeter system for that calendar quarter. A one-quarter extension of the deadline for the next fuel flowmeter system accuracy test may be claimed for a quarter in which there is insufficient hourly data available to analyze or a quarter that ends with the baseline data collection period still in progress.

(2) For a unit that normally co-fires different types of fuel (e.g., oil and natural gas), include the contribution of each type of fuel in the value of $(\text{Heat Input})_h$, when using Equation D–1e.

* * * * *

(h) * * * For units that normally co-fire different types of fuel, if the GHR option is used, apply the test results to each fuel flowmeter system used during the quarter.

2.1.7.3 Optional Data Exclusions

(a) If E_f is outside the limits in section 2.1.7.2(h) of this appendix, the owner or operator may re-examine the hourly fuel flow rate-to-load ratios (or GHRs) that were used for the data analysis and may identify and exclude fuel flow-to-load ratios or GHR values for any non-representative hours, provided that such data exclusions were not previously made under section 2.1.7.2(a) of this appendix. Specifically, the R_h or $(GHR)_h$ values for the following hours may be considered non-representative:

(1) For units that do not normally co-fire fuels, any hour in which the unit combusted another fuel in addition to the fuel measured by the fuel flowmeter being tested; or

(2) Any hour for which the load differed by more than ± 15.0 percent from the load during either the preceding hour or the subsequent hour; or

(3) For units that normally co-fire different fuels, any hour in which the unit burned only one type of fuel; or

(4) Any hour for which the unit load was in the lower 25.0 percent of the range of operation, as defined in section 6.5.2.1 of appendix A to this part (unless operation in the lower 25.0 percent of the range is considered normal for the unit).

(b) * * * If fewer than 168 hourly fuel flow-to-load ratio or GHR values remain after the allowable data exclusions, a fuel flow-to-load ratio or GHR analysis is not required for that quarter, and a one-quarter extension of the fuel flowmeter accuracy test deadline may be claimed.

* * * * *

2.1.7.5 Test Results

* * * * *

Table D–3.—Baseline Information and Test Results For Fuel Flow-to-Load Test

Plant name:_____ State:____ ORIS code:_____

Unit/pipe ID #:_____ Fuel flowmeter system ID :___ Calendar quarter (1st, 2nd, 3rd, 4th) and year:_____

Range of operation: _____ to _____ MWe or klb steam/hr (indicate units)

Reported Data Elements	
Baseline period	Quarterly analysis
Completion date and time of most recent QA sequence, i.e., primary element inspection and transmitter calibration (orifice-, nozzle-, and venturi-type flowmeters only). __/__/__ __:__	Number of hours excluded from quarterly average due to co-firing different fuels (where co-firing is not normal operation):_____ hrs.
Completion date and time of most recent flowmeter or accuracy test (all other flowmeters) __/__/__ __:__	Number of hours excluded from quarterly average due to single-fuel combustion (where co-firing is normal operation):_____ hrs.
Beginning date and time of baseline period __/__/__ __:__	Number of hours excluded from quarterly average due to ramping load:_____ hrs.
End date and time of baseline period __/__/__ __:__	Number of hours in the lower 25.0 percent of the range of operation excluded from quarterly average: _____hrs.
Average fuel flow rate_____ (100 scfh for gas and lb/hr for oil)	Number of hours included in quarterly average:_____ hrs.
	Quarterly percentage difference between hourly ratios and baseline ratio:_____ percent.
Average load;_____ (MWe or 1000 lb steam/hr)	Test result: pass, fail.
Baseline fuel flow-to-load ratio _____ Units of fuel flow-to-load:_____	
Baseline GHR: _____ Units of fuel flow-to-load:_____	
Number of hours excluded from baseline ratio or GHR due to ramping load: _____	
Number of hours in the lower 25.0 percent of the range of operation excluded from baseline ratio or GHR: _____hrs.	

2.2 Oil Sampling and Analysis

* * * * *

TABLE D-4. -- OIL SAMPLING METHODS AND SULFUR, DENSITY AND GROSS CALORIFIC VALUE USED IN CALCULATIONS

Parameter	Sampling technique/frequency	Value used in calculations (except for missing data hours)
Oil Sulfur Content	Daily manual sampling	1. Highest sulfur content from previous 30 daily samples; or 2. Actual daily value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained[1]
Oil Density	Daily manual sampling	1. Use the highest density from the previous 30 daily samples; or 2. Actual measured value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained[1]
Oil GCV	Daily manual sampling	1. Highest fuel GCV from the previous 30 daily samples; or 2. Actual measured value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 3. Maximum value allowed by contract, unless a higher sample value is obtained[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year, unless a higher sample value is obtained;[1] or 2. Maximum value allowed by contract, unless a higher sample value is obtained[1]

√ Assumed values may only be used if sulfur content, gross calorific value, or density of each sample is no greater than the assumed value used to calculate emissions or heat input. If a higher sample value is obtained, use the results of that sample analysis as the new assumed value.

* * * * *

2.2.4.2 Sampling from a Unit's Storage Tank

* * * * *

(b) One of the conservative assumed values described in section 2.2.4.3(c) of this appendix. Follow the applicable provisions in section 2.2.4.3(d) of this appendix, regarding the use of assumed values.

2.2.4.3 Sampling From Each Delivery

* * * * *

(d) Continue using the assumed value(s), so long as the sample results do not exceed the assumed value(s). However, if the actual sampled sulfur content, gross calorific value, or density of an oil sample is greater than the assumed value for that parameter, then, consistent with section 2.3.7 of this appendix, begin to use the actual sampled value for sulfur content, gross calorific value, or density of fuel to calculate SO2 mass emission rate or heat input rate. Consider the sampled value to be the new assumed sulfur content, gross calorific value, or density. Continue using this new assumed value to calculate SO2 mass emission rate or heat input rate unless and until: it is superseded by a higher value from an oil sample; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

* * * * *

2.3 *SO_2 Emissions from Combustion of Gaseous Fuels*

* * * * *

(b) * * *

TABLE D-5. -- GAS SULFUR AND GCV VALUES USED IN CALCULATIONS FOR VARIOUS FUEL TYPES

Parameter	Fuel type and sampling frequency	Value used in calculations (except for missing data hours)
Gas Total Sulfur Content	Pipeline Natural Gas with total sulfur content less than or equal to 0.5 grains/100scf * Sampling is not required if a valid contract or tariff sheet is used to qualify. * If fuel sampling and analysis is used to qualify, sample annually and whenever the fuel supply source changes.	1. If a contract or tariff sheet is used to qualify, use 0.0006 lb/mmBtu 2. If fuel sampling and analysis is used to qualify, use 0.0006 lb/mmBtu, provided that the results of the required annual samples do not exceed 0.5 grains/100 scf of total sulfur. If the results of an annual sample exceed 0.5 grains/100 scf, re-classify the fuel as appropriate and determine the SO_2 emission rate to be used in the calculations, using the applicable procedures in section 2.3.2 or 2.3.3 of this appendix
	Natural Gas with total sulfur content less than or equal to 20.0 grains /100scf * Sampling is not required if a valid contract or tariff sheet is used to qualify. * If fuel sampling and analysis is used to qualify, sample annually and whenever the fuel supply source changes.	Default SO_2 emission rate calculated from Eq. D-1h, using either: 1. The maximum total sulfur content specified in the fuel contract or tariff sheet, if a contract or tariff sheet is used to qualify; or 2. The total sulfur content, based on the most recent fuel sampling and analysis. If multiple samples are taken, the results may be averaged before using Equation D-1h.
	Any gaseous fuel transmitted by pipeline, having a "low sulfur variability", as shown under section 2.3.6 of this appendix. * Either sample daily or, if Eq. D-1h is used to calculate a default SO_2 emission rate, sample annually.	* If daily sampling is performed, use either: 1. Actual value from the daily sample; or 2. Highest value from previous 30 samples. * If the option to use Eq. D-1h is selected, use a default SO_2 emission rate, calculated using the higher of: 1. The 90th percentile value of the total sulfur content, obtained in the 720-hr demonstration under section 2.3.6; or 2. The actual total sulfur content from the most recent annual sample. If multiple samples are taken, the results may be averaged before using Equation D-1h.

Parameter	Fuel type and sampling frequency	Value used in calculations (except for missing data hours)
	Any gaseous fuel transmitted by pipeline, having a maximum total sulfur content ≤ 20 grains/100 scf and "high sulfur variability", as shown under section 2.3.6 of this appendix. * Either sample hourly or, if Eq. D-1h is used to calculate a default SO_2 emission rate, sample annually.	* If hourly sampling is performed, use the actual hourly value * If the option to use Eq. D-1h is selected, use a default SO_2 emission rate, calculated using the higher of: 1. The maximum value of the total sulfur content, obtained in the 720-hr demonstration under section 2.3.6; or 2. The actual total sulfur content from the most recent annual sample. If multiple samples are taken, the results may be averaged before using Equation D-1h.
	Any gaseous fuel transmitted by pipeline, having a maximum total sulfur content > 20 grains/100 scf and "high sulfur variability", as shown under section 2.3.6 of this appendix. * Sample hourly	Actual hourly sulfur content of the gas
	Any gaseous fuel delivered in shipments or lots * Sample each lot or shipment.	1. Actual total sulfur content from most recent shipment; or 2. Highest total sulfur content from previous year's samples, unless a higher value is obtained in a sample[1] ; or 3. Maximum total sulfur content value allowed by contract, unless a higher value is obtained in a sample.[1]
Gas GCV	Pipeline Natural Gas * Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); 2. Maximum GCV from contract, unless a higher value is obtained in a monthly sample;[1] or 3. Highest GCV from previous year's samples, unless a higher value is obtained in a monthly sample.[1]
	Natural Gas * Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); 2. Maximum GCV from contract[1] or 3. Highest GCV from previous year's samples.[1]
	Any gaseous fuel delivered in shipments or lots * Sample each lot or shipment	1. Actual GCV from most recent shipment or lot; 2. Highest GCV from previous year's samples, unless a higher value is obtained in a sample;[1] or 3. Maximum GCV value allowed by contract, unless a higher value is obtained in a sample.[1]

Parameter	Fuel type and sampling frequency	Value used in calculations (except for missing data hours)
	Any gaseous fuel transmitted by pipeline and having a demonstrated "low GCV variability" using the provisions of section 2.3.5 * Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); or 2. Highest GCV from previous year's samples, unless a higher value is obtained in a monthly sample.[1]
	Any gaseous fuel not demonstrated to have a "low GCV variability" under section 2.3.5 * Sample daily or hourly. (Note that the use of an on-line GCV calorimeter or gas chromatograph is allowed).	Actual daily or hourly GCV of the gas.

[1] Assumed sulfur content and GCV values (i.e., contract values or highest values from previous year) may only continue to be used if the sulfur content or GCV of each sample is no greater than the assumed value used to calculate SO_2 emissions or heat input. If a higher sample value is obtained, use the results of that sample analysis as the new assumed value.

2.3.1 Pipeline Natural Gas Combustion

* * * * *

2.3.1.4 Documentation that a Fuel is Pipeline Natural Gas

(a) A fuel may initially qualify as pipeline natural gas, if information is provided in the monitoring plan required under § 75.53, demonstrating that the definition of pipeline natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel meets either the percent methane or GCV requirement and has a total sulfur content of 0.5 grains/100scf or less. The demonstration must be made using one of the following sources of information:

(1) The gas quality characteristics specified by a purchase contract, tariff sheet, or by a pipeline transportation contract; or

* * * * *

(2) Historical fuel sampling data for the previous 12 months, documenting the total sulfur content of the fuel and the GCV and/or percentage by volume of methane. The results of all sample analyses obtained by or provided to the owner or operator in the previous 12 months shall be used in the demonstration, and each sample result must meet the definition of pipeline natural gas in § 72.2 of this chapter; or

(3) If the requirements of paragraphs (a)(1) and (a)(2) of this section cannot be met, a fuel may initially qualify as pipeline natural gas if at least one representative sample of the fuel is obtained and analyzed for total sulfur content and for either the gross calorific value (GCV) or percent methane, and the results of the sample analysis show that the fuel meets the definition of pipeline natural gas in § 72.2 of this chapter. Use the sampling methods specified in sections 2.3.3.1.2 and 2.3.4 of this appendix. The required fuel sample may be obtained and analyzed by the owner or operator, by an independent laboratory, or by the fuel supplier. If multiple samples are taken, each sample must meet the definition of pipeline natural gas in § 72.2 of this chapter.

(b) If the results of the fuel sampling under paragraph (a)(2) or (a)(3) of this section show that the fuel does not meet the definition of pipeline natural gas in § 72.2 of this chapter, but those results are believed to be anomalous, the owner or operator may document the reasons for believing this in the monitoring plan for the unit, and may immediately perform additional sampling. In such cases, a minimum of three additional samples must be obtained and analyzed, and the results of each sample analysis must meet the definition of pipeline natural gas.

(c) If several affected units are supplied by a common source of gaseous fuel, a single sampling result may be applied to all of the units and it is not necessary to obtain a separate sample for each unit, provided that the composition of the fuel is not altered by blending or mixing it with other gaseous fuel(s) when it is transported from the sampling location to the affected units. For the purposes of this paragraph, the term "other gaseous fuel(s)" excludes compounds such as mercaptans when they are added in trace quantities for safety reasons.

(d) If the results of fuel sampling and analysis under paragraph (a)(2), (a)(3), or (b) of this section show that the fuel does not qualify as pipeline natural gas, proceed as follows:

(1) If the fuel still qualifies as natural gas under section 2.3.2.4 of this appendix, re-classify the fuel as natural gas and determine the appropriate default SO_2 emission rate for the fuel, according to section 2.3.2.1.1 of this appendix; or

(2) If the fuel does not qualify either as pipeline natural gas or natural gas, re-classify the fuel as "other gaseous fuel" and implement the procedures of section 2.3.3 of this appendix, within 180 days of the end of the quarter in which the disqualifying sample was taken. In addition, the owner or operator shall use Equation D–1h in this appendix to calculate a default SO_2 emission rate for the fuel, based on the results of the sample analysis that exceeded 20 grains/100 scf of total sulfur, and shall use that default emission rate to report SO_2 mass emissions under this part until section 2.3.3 of this appendix has been fully implemented.

(e) If a fuel qualifies as pipeline natural gas based on the specifications in a fuel contract or tariff sheet, no additional, on-going sampling of the fuel's total sulfur content is required, provided that the contract or tariff sheet is current, valid and representative of the fuel combusted in the unit. If the fuel qualifies as pipeline natural gas based on fuel sampling and analysis, on-going sampling of the fuel's sulfur content is required annually and whenever the fuel supply source changes. For the purposes of this paragraph, (e), sampling ''annually'' means that at least one sample is taken in each calendar year. The effective date of the annual total sulfur sampling requirement is January 1, 2003.

(f) On-going sampling of the GCV of the pipeline natural gas is required under section 2.3.4.1 of this appendix.

(g) For units that are required to monitor and report NO_X mass emissions and heat input under subpart H of this part, but which are not affected units under the Acid Rain Program, the owner or operator is exempted from the requirements in paragraphs (a) and (e) of this section to document the total sulfur content of the pipeline natural gas.

2.3.2 Natural Gas Combustion

* * * * *

2.3.2.1.1 In lieu of daily sampling of the sulfur content of the natural gas, the owner or operator may either use the total sulfur content specified in a contract or tariff sheet as the SO_2 default emission rate or may calculate the default SO_2 emission rate based on fuel sampling results, using Equation D–1h. In Equation D–1h, the total sulfur content and GCV values shall be determined in accordance with Table D–5 of this appendix. Round off the calculated SO_2 default emission rate to the nearest 0.0001 lb/mmBtu.

$$ER = \left[\frac{2.0}{7000}\right] \times \left[10^6\right] \times \left[\frac{S_{total}}{GCV}\right] \qquad \text{(Eq. D-1h)}$$

Where:

ER = Default SO_2 emission rate for natural gas combustion, lb/mmBtu.

S_{total} = Total sulfur content of the natural gas, gr/100scf.

GCV = Gross calorific value of the natural gas, Btu/100scf.

7000 = Conversion of grains/100scf to lb/100scf.

2.0 = Ratio of lb SO_2/lb S.

10^6 = Conversion factor (Btu/mmBtu).

2.3.2.1.2 [Reserved]

* * * * *

2.3.2.4 Documentation that a Fuel Is Natural Gas

(a) A fuel may initially qualify as natural gas, if information is provided in the monitoring plan required under § 75.53, demonstrating that the definition of natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel meets either the percent methane or GCV requirement and has a total sulfur content of 20.0 grains/100 scf or less. This demonstration must be made using one of the following sources of information:

(1) The gas quality characteristics specified by a purchase contract, tariff sheet, or by a transportation contract; or

(2) Historical fuel sampling data for the previous 12 months, documenting the total sulfur content of the fuel and the GCV and/or percentage by volume of methane. The results of all sample analyses obtained by or provided to the owner or operator in the previous 12 months shall be used in the demonstration, and each sample result must meet the definition of natural gas in § 72.2 of this chapter; or

(3) If the requirements of paragraphs (a)(1) and (a)(2) of this section cannot be met, a fuel may initially qualify as natural gas if at least one representative sample of the fuel is obtained and analyzed for total sulfur content and for either the gross calorific value (GCV) or percent methane, and the results of the sample analysis show that the fuel meets the definition of natural gas in § 72.2 of this chapter. Use the sampling methods specified in sections 2.3.3.1.2 and 2.3.4 of this appendix. The required fuel sample may be obtained and analyzed by the owner or operator, by an independent laboratory, or by the fuel supplier. If multiple samples are taken, each sample must meet the definition of natural gas in § 72.2 of this chapter.

(b) If the results of the fuel sampling under paragraph (a)(2) or (a)(3) of this section show that the fuel does not meet the definition of natural gas in § 72.2 of this chapter, but those results are believed to be anomalous, the owner or operator may document the reasons for believing this in the monitoring plan for the unit, and may immediately perform additional sampling. In such cases, a minimum of three additional samples must be obtained and analyzed, and the results of each sample analysis must meet the definition of natural gas.

(c) If several affected units are supplied by a common source of gaseous fuel, a single sampling result may be applied to all of the units and it is not necessary to obtain a separate sample for each unit, provided that the composition of the fuel is not altered by blending or mixing it with other gaseous fuel(s) when it is transported from the sampling location to the affected units. For the purposes of this paragraph, the term ''other gaseous fuel(s)'' excludes compounds such as mercaptans when they are added in trace quantities for safety reasons.

(d) If the results of fuel sampling and analysis under paragraph (a)(2), (a)(3), or (b) of this section show that the fuel does not qualify as natural gas, the owner or operator shall re-classify the fuel as ''other gaseous fuel'' and shall implement the procedures of section 2.3.3 of this appendix, within 180 days of the end of the quarter in which the disqualifying sample was taken. In addition, the owner or operator shall use Equation D–1h in this appendix to calculate a default SO_2 emission rate for the fuel, based on the results of the sample analysis that exceeded 20 grains/100 scf of total sulfur, and shall use that default emission rate to report SO_2 mass emissions under this part until section 2.3.3 of this appendix has been fully implemented.

(e) If a fuel qualifies as natural gas based on the specifications in a fuel contract or tariff sheet, no additional, on-going sampling of the fuel's total sulfur content is required, provided that the contract or tariff sheet is current, valid and representative of the fuel combusted in the unit. If the fuel qualifies as natural gas based on fuel sampling and analysis, the owner or operator shall sample the fuel for total sulfur content at least annually and when the fuel supply source changes. For the purposes of this paragraph, (e), sampling ''annually'' means that at least one sample is taken in each calendar year. The effective date of the annual total sulfur sampling requirement is January 1, 2003.

(f) On-going sampling of the GCV of the natural gas is required under section 2.3.4.2 of this appendix.

(g) For units that are required to monitor and report NO_X mass emissions

and heat input under subpart H of this part, but which are not affected units under the Acid Rain Program, the owner or operator is exempted from the requirements in paragraphs (a) and (e) of this section to document the total sulfur content of the natural gas.

2.3.3 SO_2 Mass Emissions From Any Gaseous Fuel

* * * * *

2.3.3.1 Sulfur Content Determination

2.3.3.1.1 Analyze the total sulfur content of the gaseous fuel in grains/100 scf, at the frequency specified in Table D–5 of this appendix. That is: for fuel delivered in discrete shipments or lots, sample each shipment or lot. For fuel transmitted by pipeline, sample hourly unless a demonstration is provided under section 2.3.6 of this appendix showing that the gaseous fuel qualifies for less frequent (*i.e.,* daily or annual) sampling. If daily sampling is required, determine the sulfur content using either manual sampling or a gas chromatograph. If hourly sampling is required, determine the sulfur content using a gas chromatograph. For units that are required to monitor and report NO_X mass emissions and heat input under subpart H of this part, but which are not affected units under the Acid Rain Program, the owner or operator is exempted from the requirements of this section to document the total sulfur content of the gaseous fuel.

* * * * *

2.3.3.2 SO_2 Mass Emission Rate

Calculate the SO_2 mass emission rate for the gaseous fuel, in lb/hr, using equation D–4 or D–5 (as applicable) in section 3.3.1 of this appendix. Equation D–5 may only be used if a demonstration is performed under section 2.3.6 of this appendix, showing that the fuel qualifies to use a default SO_2 emission rate to account for SO_2 mass emissions under this part. Use the appropriate sulfur content, in equation D–4 or D–5, as specified in Table D–5 of this appendix. If the fuel qualifies to use Equation D–5, the default SO_2 emission rate shall be calculated using Equation D–1h in section 2.3.2.1.1 of this appendix, replacing the words ''natural gas'' in the equation nomenclature with the words, ''gaseous fuel''. In all cases, for reporting purposes, apply the results of the required periodic total sulfur samples in accordance with the provisions of section 2.3.7 of this appendix.

* * * * *

2.3.4 Gross Calorific Values for Gaseous Fuels

* * * * *

2.3.4.3 GCV of Other Gaseous Fuels

* * * For reporting purposes, apply the results of the required periodic GCV samples in accordance with the provisions of section 2.3.7 of this appendix.

2.3.4.3.1 * * * For sampling from the tank after each delivery, use either the most recent GCV sample, the maximum GCV specified in the fuel contract or tariff sheet, or the highest GCV from the previous year's samples.

2.3.4.3.2 For any gaseous fuel that does not qualify as pipeline natural gas or natural gas, which is not delivered in shipments or lots, and for which the owner or operator performs the 720 hour test under section 2.3.5 of this appendix, if the results of the test demonstrate that the gaseous fuel has a low GCV variability, determine the GCV at least monthly (as described in section 2.3.4.1 of this appendix). In calculations of hourly heat input for a unit, use either the most recent monthly sample, the maximum GCV specified in the fuel contract or tariff sheet, or the highest fuel GCV from the previous year's samples.

* * * * *

2.3.5 Demonstration of Fuel GCV Variability

(a) This optional demonstration may be made for any fuel which does not qualify as pipeline natural gas or natural gas, and is not delivered only in shipments or lots. The demonstration data may be used to show that monthly sampling of the GCV of the gaseous fuel or blend is sufficient, in lieu of daily GCV sampling.

* * * * *

2.3.6 Demonstration of Fuel Sulfur Variability

(a) This demonstration may be made for any fuel which does not qualify as pipeline natural gas or natural gas, and is not delivered only in shipments or lots. The results of the demonstration may be used to show that daily sampling for sulfur in the fuel is sufficient, rather than hourly sampling. The procedures in this section may also be used to demonstrate that a particular gaseous fuel qualifies to use a default SO_2 emission rate (calculated using Equation D–1h in section 2.3.2.1.1 of this appendix) for the purpose of reporting hourly SO_2 mass emissions under this part. To make this demonstration, proceed as follows. Provide a minimum of 720 hours of data, indicating the total sulfur content of the gaseous fuel (in gr/100 scf). The demonstration data shall be obtained using either manual hourly sampling or an on-line gas chromatograph (GC) capable of determining fuel total sulfur content on an hourly basis. For gaseous fuel produced by a variable process, the data shall be representative of all process operating conditions including seasonal or annual variations which may affect fuel sulfur content.

(b) If the data are collected with an on-line GC, reduce the data to hourly average values of the total sulfur content of the fuel. If manual hourly sampling is used, the results of each hourly sample analysis shall be the total sulfur value for that hour. Express all hourly average values of total sulfur content in units of grains/ 100 scf. Use all of the hourly average values of total sulfur content in grains/100 scf to calculate the mean value and the standard deviation. Also determine the 90th percentile and maximum hourly values of the total sulfur content for the data set. If the standard deviation of the hourly values from the mean does not exceed 5.0 grains/100 scf, the fuel has a low sulfur variability. If the standard deviation exceeds 5.0 grains/100 scf, the fuel has a high sulfur variability. Based on the results of this determination, establish the required sampling frequency and SO_2 mass emissions methodology for the gaseous fuel, as follows:

(1) If the gaseous fuel has a low sulfur variability (irrespective of the total sulfur content), the owner or operator may either perform daily sampling of the fuel's total sulfur content using manual sampling or a GC, or may report hourly SO_2 mass emissions data using a default SO_2 emission rate calculated by substituting the 90th percentile value of the total sulfur content in Equation D–1h.

(2) If the gaseous fuel has a high sulfur variability, but the maximum hourly value of the total sulfur content does not exceed 20 grains/100 scf, the owner or operator may either perform hourly sampling of the fuel's total sulfur content using an on-line GC, or may report hourly SO_2 mass emissions data using a default SO_2 emission rate calculated by substituting the maximum value of the total sulfur content in Equation D–1h.

(3) If the gaseous fuel has a high sulfur variability and the maximum hourly value of the total sulfur content exceeds 20 grains/100 scf, the owner or operator shall perform hourly sampling of the fuel's total sulfur content, using an on-line GC.

(4) Any gaseous fuel under paragraph (b)(1) or (b)(2) of this section, for which

the owner or operator elects to use a default SO_2 emission rate for reporting purposes is subject to the annual total sulfur sampling requirement under section 2.3.2.4(e) of this appendix.

2.3.7 Application of Fuel Sampling Results

For reporting purposes, apply the results of the required periodic fuel samples described in Tables D–4 and D–5 of this appendix as follows. Use Equation D–1h to recalculate the SO_2 emission rate, as necessary.

(a) For daily samples of total sulfur content or GCV:

(1) If the actual value is to be used in the calculations, apply the results of each daily sample to all hours in the day on which the sample is taken; or

(2) If the highest value in the previous 30 daily samples is to be used in the calculations, apply that value to all hours in the current day. If, for a particular unit, fewer than 30 daily samples have been collected, use the highest value from all available samples until 30 days of historical sampling results have been obtained.

(b) For annual samples of total sulfur content:

(1) For pipeline natural gas, use the results of annual sample analyses in the calculations only if the results exceed 0.5 grains/100 scf. In that case, if the fuel still qualifies as natural gas, follow the procedures in paragraph (b)(2) of this section. If the fuel does not qualify as natural gas, the owner or operator shall implement the procedures in section 2.3.3 of this appendix, in the time frame specified in sections 2.3.1.4(d) and 2.3.2.4(d) of this appendix;

(2) For natural gas, apply the results of the most recent sample, beginning at the date of the sample;

(3) For other gaseous fuels with an annual sampling requirement under section 2.3.6(b)(4) of this appendix, use the sample results in the calculations only if the results exceed the 90th percentile value or maximum value (as applicable) from the 720-hour demonstration of fuel sulfur content and variability under section 2.3.6 of this appendix.

(c) For monthly samples of the fuel GCV:

(1) If the actual value is to be used in the calculations, apply the results of the most recent sample, starting from the date on which the sample was taken; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value to all hours in each month of the quarter unless a higher value is obtained in a monthly GCV sample. In that case, use the sampled value, starting from the date on which the sample was taken. Consider the sample results to be the new assumed value. Continue using the new assumed value unless and until it is superseded by a higher value from a subsequent monthly sample; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

(d) For samples of gaseous fuel delivered in shipments or lots:

(1) If the actual value for the most recent shipment is to be used in the calculations, apply the results of the most recent sample, from the date on which the sample was taken until the date on which the next sample is taken; or

(2) If an assumed value (contract maximum or highest value from previous year's samples) is to be used in the calculations, apply the assumed value unless a higher value is obtained in a sample of a shipment. In that case, use the sampled value, starting from the date on which the sample was taken. Consider the sample results to be the new assumed value. Continue using the new assumed value unless and until: it is superseded by a higher value from a sample of a subsequent shipment; or (if applicable) it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

(e) When the owner or operator elects to use assumed values in the calculations, the results of periodic samples of sulfur content and GCV which show that the assumed value has not been exceeded need not be reported. Keep these sample results on file, in a format suitable for inspection.

(f) Notwithstanding the requirements of paragraphs (b) through (d) of this section, in cases where the sample results are provided to the owner or operator by the supplier of the fuel, the owner or operator shall begin using the sampling results on the date of receipt of those results, rather than on the date that the sample was taken.

2.4 Missing Data Procedures

* * * * *

2.4.1 Missing Data for Oil and Gas Samples

* * * Except for the annual samples of fuel sulfur content required under sections 2.3.1.4(e), 2.3.2.4(e) and 2.3.6(b)(5) of this appendix, the missing data values in Table D–6 shall be reported whenever the results of a required sample of sulfur content, GCV or density is missing or invalid in the current calendar year, irrespective of which reporting option is selected (i.e., actual value, contract value or highest value from the previous year). For the annual samples of fuel sulfur content required under sections 2.3.1.4(e), 2.3.2.4(e) and 2.3.6(b)(5) of this appendix, if a valid annual sample has not been obtained by the end of a particular calendar year, the appropriate missing data value in Table D–6 shall be reported, beginning with the first unit operating hour in the next calendar year. * * *

TABLE D-6. -- MISSING DATA SUBSTITUTION PROCEDURES FOR SULFUR, DENSITY, AND GROSS CALORIFIC VALUE DATA

Parameter	Missing data substitution maximum potential value
Oil Sulfur Content	3.5 percent for residual oil, or 1.0 percent for diesel fuel.
Oil Density	8.5 lb/gal for residual oil, or 7.4 lb/gal for diesel fuel.
Oil GCV	19,500 Btu/lb for residual oil, or 20,000 Btu/lb for diesel fuel.
Gas Total Sulfur Content	1. For pipeline natural gas, where annual sampling is required, substitute 0.002 lb/mmBtu for each hour of the missing data period. 2. For natural gas (or other gaseous fuel that qualifies to use a default SO_2 emission rate under section 2.3.6 of this appendix), where annual sampling is required, substitute 1.5 times the default SO_2 emission rate in use at the time of the missing data period. 3. For any gaseous fuel sampled daily, 1.5 times the highest total sulfur content value from the previous 30 days on which valid samples were obtained. 4. For any gaseous fuel sampled hourly, the highest total sulfur content value from the previous 720 hourly samples.
Gas GCV/Heat Content	110,000 Btu/100 scf for pipeline natural gas, natural gas or landfill gas. 150,000 Btu/100 scf for butane or refinery gas. 210,000 Btu/100 scf for propane or any other gaseous fuel.

2.4.2 Missing Data Procedures for Fuel Flow Rate.

Whenever data are missing from any primary fuel flowmeter system (as defined in § 72.2 of this chapter) and there is no backup system available to record the fuel flow rate, use the procedures in sections 2.4.2.2 and 2.4.2.3 of this appendix to account for the flow rate of fuel combusted at the unit for each hour during the missing data period. Alternatively, for a fuel flowmeter system used to measure the fuel combusted by a peaking unit, the simplified fuel flow missing data procedure in section 2.4.2.1 of this appendix may be used. Before using the procedures in sections 2.4.2.2 and 2.4.2.3 of this appendix, establish load ranges for the unit using the procedures of section 2 in appendix C to this part, except for units that do not produce electrical output (i.e., megawatts) or thermal output (e.g., klb of steam per hour). The owner or operator of a unit that does not produce electrical or thermal output shall either perform missing data substitution without segregating the fuel flow rate data into bins, or may petition the Administrator under § 75.66 for permission to segregate the data into operational bins. When load ranges are used for fuel flow rate missing data purposes, separate, fuel-specific databases shall be created and maintained. A database shall be kept for each type of fuel combusted in the unit, for the hours in which the fuel is combusted alone in the unit. An additional database shall be kept for each type of fuel, for the hours in which it is co-fired with any other type(s) of fuel(s).

2.4.2.1 Simplified Fuel Flow Rate Missing Data Procedure for Peaking Units

If no fuel flow rate data are available for a fuel flowmeter system installed on a peaking unit (as defined in § 72.2 of this chapter), then substitute for each hour of missing data using the maximum potential fuel flow rate. The maximum potential fuel flow rate is the lesser of the following:

(a) The maximum fuel flow rate the unit is capable of combusting or

(b) The maximum flow rate that the fuel flowmeter can measure (i.e, the upper range value of the flowmeter).

2.4.2.2 Standard Missing Data Procedures—Single Fuel Hours

For missing data periods that occur when only one type of fuel is being combusted, provide substitute data for each hour in the missing data period as follows.

2.4.2.2.1 If load-based missing data procedures are used, substitute the arithmetic average of the hourly fuel flow rate(s) measured and recorded by a certified fuel flowmeter system at the corresponding operating unit load range during the previous 720 operating hours in which the unit combusted only that same fuel. If no fuel flow rate data are available at the corresponding load range, use data from the next higher load range, if such data are available. If no quality-assured fuel flow rate data are available at either the corresponding load range or a higher load range, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1

of this appendix) for each hour of the missing data period.

2.4.2.2.2 For units that do not produce electrical or thermal output and therefore cannot use load-based missing data procedures, provide substitute data for each hour of the missing data period as follows. Substitute the arithmetic average of the hourly fuel flow rates measured and recorded by a certified fuel flowmeter system during the previous 720 operating hours in which the unit combusted only that same fuel. If no quality-assured fuel flow rate data are available, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3 Standard Missing Data Procedures—Multiple Fuel Hours

For missing data periods that occur when two or more different types of fuel are being co-fired, provide substitute fuel flow rate data for each hour of the missing data period as follows.

2.4.2.3.1 If load-based missing data procedures are used, substitute the maximum hourly fuel flow rate measured and recorded by a certified fuel flowmeter system at the corresponding load range during the previous 720 operating hours when the fuel for which the flow rate data are missing was co-fired with any other type of fuel. If no such quality-assured fuel flow rate data are available at the corresponding load range, use data from the next higher load range (if available). If no quality-assured fuel flow rate data are available for co-fired hours, either at the corresponding load range or a higher load range, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3.2 For units that do not produce electrical or thermal output and therefore cannot use load-based missing data procedures, provide substitute fuel flow rate data for each hour of the missing data period as follows. Substitute the maximum hourly fuel flow rate measured and recorded by a certified fuel flowmeter system during the previous 720 operating hours in which the fuel for which the flow rate data are missing was co-fired with any other type of fuel. If no quality-assured fuel flow rate data for co-fired hours are available, substitute the maximum potential fuel flow rate (as defined in section 2.4.2.1 of this appendix) for each hour of the missing data period.

2.4.2.3.3 If, during an hour in which different types of fuel are co-fired, quality-assured fuel flow rate data are missing for two or more of the fuels being combusted, apply the procedures in section 2.4.2.3.1 or 2.4.2.3.2 of this appendix (as applicable) separately for each type of fuel.

2.4.2.3.4 If the missing data substitution required in section 2.4.2.3.1 or 2.4.2.3.2 causes the reported hourly heat input rate based on the combined fuel usage to exceed the maximum rated hourly heat input of the unit, adjust the substitute fuel flow rate value(s) so that the reported heat input rate equals the unit's maximum rated hourly heat input. Manual entry of the adjusted substitute data values is permitted.

2.4.3 * * * In addition, for a new or newly-affected unit, until 720 hours of quality-assured fuel flowmeter data are available for the lookback periods described in sections 2.4.2.2 and 2.4.2.3 of this appendix, use all of the available fuel flowmeter data to determine the appropriate substitute data values.

58. Section 3 of Appendix D to Part 75 is amended by:

a. In the definition of the variable ''$\%S_{oil}$'' in Equation D–2 in section 3.1.1 by removing the word ''measured'' and by revising the word ''sample'' to read ''oil'';

b. Equation D–4 is revised;

c. In the definition of the variable ''GCV_{gas}'' in Equation D–6 in paragraph (b) of section 3.4.1 by revising the word ''Btu/hr'' to read ''Btu/100 scf'';

d. In the definition of the variable ''GCV_{oil}'' in Equation D–8 in paragraph (a) of section 3.4.2 by adding the word ''or'' after the word ''Btu/ton,'';

e. Adding a new paragraph (c) to section 3.4.2;

f. Removing the second sentence in paragraph (a) of section 3.4.3;

g. In paragraph (b) in section 3.4.3 by revising the words ''Equation D–10 or D–11'' to read ''Equation F–21a or F–21b in appendix F to this part'' in the third sentence and by removing and reserving Equations D–10 and D–11 and their variable respective definitions;

h. In paragraph (c) of section 3.4.3 by revising the words ''Equation D–10 or D–11'' to read ''Equation F–21a or F–21b'';

i. Revising the section heading of section 3.5;

j. In section heading 3.5.4 by adding the words ''Rate and Heat Input'' after the word ''Input'';

k. Designating the existing text of section 3.5.4 as section 3.5.4.1 and adding section 3.5.4.2 and Equation D–15a following the variable definitions for Equation D–15; and

l. Revising Equation D–16 in section 3.5.5.

The revisions and additions read as follows:

3. Calculations

* * * * *

$$SO_{2_{rate\text{-}gas}} = \left(\frac{2.0}{7000}\right) \times GAS_{rate} \times S_{gas} \qquad \text{(Eq. D-4)}$$

Where:

SO2rate-gas = Hourly mass rate of SO_2 emitted due to combustion of gaseous fuel, lb/hr.

GASrate = Hourly metered flow rate of gaseous fuel combusted, 100 scf/hr.

Sgas = Sulfur content of gaseous fuel, in grain/100 scf.

2.0 = Ratio of lb SO_2/lb S.

7000 = Conversion of grains/100 scf to lb/100 scf.

* * * * *

3.4.2 Heat Input Rate from the Combustion of Oil

* * * * *

(c) For affected units that are not subject to an Acid Rain emissions limitation, but are regulated under a State or Federal NO_X mass emissions reduction program that adopts the requirements of subpart H of this part, the following alternative method may be used to determine the heat input rate from oil combustion, when the oil flowmeter measures the flow rate of oil volumetrically. In lieu of measuring the oil density and converting the volumetric oil flow rate to a mass flow rate, Equation D–8 may be applied on a volumetric basis. If this option is selected, express the terms OIL_{rate} and GCV_{oil} in Equation D–8 in units of volume rather than mass. For example, the units of OIL_{rate} may be gal/hr and the units of GCV_{oil} may be Btu/gal.

* * * * *

3.5 Conversion of Hourly Rates to Hourly, Quarterly, and Year-to-Date Totals

* * * * *

3.5.4 Hourly Total Heat Input Rate and Heat Input from the Combustion of all Fuels

3.5.4.1

* * * * *

3.5.4.2 For reporting purposes, determine the heat input rate to each unit, in mmBtu/hr, for each hour from the combustion of all fuels using Equation D–15a:

$$HI_{rate\text{-}hr} = \frac{\sum_{all\text{-}fuels} HI_{rate\text{-}i} t_i}{t_u} \quad \text{(Eq. D-15a)}$$

Where:

$HI_{rate\text{-}hr}$ = Total heat input rate from all fuels combusted during the hour, mmBtu/hr.

$HI_{rate\text{-}i}$ = Heat input rate for each type of gas or oil combusted during the hour, mmBtu/hr.

t_i = Time each gas or oil fuel was combusted for the hour (fuel usage time), fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_u = Unit operating time

* * * * *

$$HI_{qtr} = \sum_{all\text{-}hours\text{-}in\text{-}qtr} HI_{hr} \quad \text{(Eq. D-16)}$$

Where:

HIqtr = Total heat input from all fuels combusted during the quarter, mmBtu.

HIqtr = Hourly heat input determined using Equation D–15, mmBtu.

* * * * *

59. Appendix E to Part 75 is amended by revising the second sentence of section 1.1, adding a sentence after the second sentence of section 1.1, and removing and reserving section 1.2.2 to read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

1. Applicability

1.1 Unit Operation Requirements

* * * If a unit's operations exceed the levels required to be a peaking unit, the owner or operator shall install and certify a NO_X-diluent continuous emission monitoring system no later than December 31 of the following calendar year. If the required CEMS has not been installed and certified by that date, the owner or operator shall report the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter) for each unit operating hour, starting with the first unit operating hour after the deadline and continuing until the CEMS has been provisionally certified. * * *

1.2 Certification

* * * * *

1.2.2 [Reserved]

Appendix E to Part 75 [Amended]

60. Appendix E to Part 75 is amended by:

a. Revising sections 2.1.4, 2.2 and 2.5.2;

b. In the second sentence of section 2.1.5 by revising the words ''nearest 0.01 lb/mm/Btu'' to read ''nearest 0.001 lb/mmBtu'';

c. In section 2.3 by revising the words ''10 unit'' to read ''30 unit'' and the words ''section 2.1 of appendix B of this part'' with ''§ 72.2 of this chapter'', and by revising the reference to ''§ 75.60(a)'' to read ''§ 75.60'';

d. In sections 2.3.1 and 2.3.2 by revising the first sentence, by revising the words ''manufacturer's recommended'' to read ''acceptable'' in the third and fourth sentences, and by adding two new sentences after the first sentence, in each section;

e. Revising the third sentence of 2.4.2;

f. Adding a new second sentence in section 2.5; and

g. Adding sections 2.5.2.1, 2.5.2.1.1, 2.5.2.1.2, 2.5.2.2, and 2.5.2.3.

The revisions and additions read as follows:

2. Procedure

* * * * *

2.1.4 Emergency Fuel

The designated representative of a unit that is restricted by its Federal, State or local permit to combusting a particular fuel only during emergencies where the primary fuel is not available may claim an exemption from the requirements of this appendix for testing the NO_X emission rate during combustion of the emergency fuel. To claim this exemption, the designated representative shall include in the monitoring plan for the unit documentation that the permit restricts use of the fuel to emergencies only. When emergency fuel is combusted, report the maximum potential NO_X emission rate for the emergency fuel, in accordance with section 2.5.2.3 of this appendix. The designated representative shall also provide notice under § 75.61(a)(6) for each period when the emergency fuel is combusted.

* * * * *

2.2 Periodic NO_X Emission Rate Testing

Retest the NO_X emission rate of the gas-fired peaking unit or the oil-fired peaking unit while combusting each type of fuel (or fuel mixture) for which a NO_X emission rate versus heat input rate correlation curve was derived, at least once every 20 calendar quarters. If a required retest is not completed by the end of the 20th calendar quarter following the quarter of the last test, use the missing data substitution procedures in section 2.5 of this appendix, beginning with the first unit operating hour after the end of the 20th calendar quarter. Continue using the missing data procedures until the required retest has been passed. Note that missing data substitution is fuel-specific (i.e., the use of substitute data is required only when combusting a fuel (or fuel mixture) for which the retesting deadline has not been met). Each time that a new fuel-specific correlation curve is derived from retesting, the new curve shall be used to report NO_X emission rate, beginning with the first operating hour in which the fuel is combusted, following the completion of the retest. Notwithstanding this requirement, for non-Acid Rain Program units that report NO_X mass emissions and heat input data only during the ozone season under § 75.74(c), if the NO_X emission rate testing is performed outside the ozone season, the new correlation curve may be used beginning with the first unit operating hour in the ozone season immediately following the testing.

2.3 Other Quality Assurance/Quality Control-Related NO_X Emission Rate Testing

* * * * *

2.3.1 For a stationary gas turbine, select at least four operating parameters indicative of the turbine's NO_X formation characteristics, and define in the QA plan for the unit the acceptable ranges for these parameters at each tested load-heat input point. The acceptable parametric ranges should be based upon the turbine manufacturer's recommendations. Alternatively, the owner or operator may use sound engineering judgment and operating experience with the unit to establish the acceptable parametric ranges, provided that the rationale for selecting these ranges is included as part of the quality-assurance plan for the unit. * * *

2.3.2 For a diesel or dual-fuel reciprocating engine, select at least four operating parameters indicative of the engine's NO_X formation characteristics, and define in the QA plan for the unit the acceptable ranges for these parameters at each tested load-heat input point. The acceptable parametric ranges should be based upon the engine manufacturer's recommendations. Alternatively, the owner or operator may use sound engineering judgment and operating experience with the unit to establish the acceptable parametric ranges, provided that the rationale for selecting these ranges is included as part of the quality-assurance plan for the unit. * * *

* * * * *

2.4 Procedures for Determining Hourly NO_X Emission Rate

* * * * *

2.4.2 * * * Linearly interpolate to 0.1 mmBtu/hr heat input rate and 0.001 lb/mmBtu NO_X. * * *

* * * * *

2.5 Missing Data Procedures

** * * For the purpose of providing substitute data, calculate the maximum potential NO_X emission rate (as defined in § 72.2 of this chapter) for each type of fuel combusted in the unit.*

* * * * *

2.5.2 Substitute missing NO_X emission rate data using the highest NO_X emission rate tabulated during the most recent set of baseline correlation tests for the same fuel or, if applicable, combination of fuels, except as provided in sections 2.5.2.1, 2.5.2.2, and 2.5.2.3 of this appendix. Manual substitution of the missing data values required under sections 2.5.2.1 and 2.5.2.2 of this appendix is permitted through March 31, 2003, after which these substitutions must be performed automatically by the data acquisition and handling system. Manual substitution of the missing data values required under section 2.5.2.3 of this appendix is permitted at all times.

2.5.2.1 If the measured heat input rate during any unit operating hour is higher than the highest heat input rate from the baseline

correlation tests, the NO_X emission rate for the hour is considered to be missing. Provide substitute data for each such hour, according to section 2.5.2.1.1 or 2.5.2.1.2 of this appendix, as applicable. Either:

2.5.2.1.1 Substitute the higher of: the NO_X emission rate obtained by linear extrapolation of the correlation curve, or the maximum potential NO_X emission rate (MER) (as defined in § 72.2 of this chapter), specific to the type of fuel being combusted. (For fuel mixtures, substitute the highest NO_X MER value for any fuel in the mixture.) For units with NO_X emission controls, the extrapolated NO_X emission rate may only be used if the controls are documented (e.g., by parametric data) to be operating properly during the missing data period (see section 2.5.2.2 of this appendix); or

2.5.2.1.2 Substitute 1.25 times the highest NO_X emission rate from the baseline correlation tests for the fuel (or fuel mixture) being combusted in the unit, not to exceed the MER for that fuel (or mixture). For units with NO_X emission controls, the option to report 1.25 times the highest emission rate from the correlation curve may only be used if the controls are documented (e.g., by parametric data) to be operating properly during the missing data period (see section 2.5.2.2 of this appendix).

2.5.2.2 For a unit with add-on NO_X emission controls (e.g., steam or water injection, selective catalytic reduction), if, for any unit operating hour, the emission controls are either not in operation or if appropriate parametric data are unavailable to ensure proper operation of the controls, the NO_X emission rate for the hour is considered to be missing. Substitute the fuel-specific MER (as defined in § 72.2 of this chapter) for each such hour.

2.5.2.3 When emergency fuel (as defined in § 72.2) is combusted in the unit, report the fuel-specific NO_X MER for each hour that the fuel is combusted, unless a NO_X correlation curve has been derived for the fuel.

* * * * *

Appendix E Part 75 [Amended]

61. Appendix E to Part 75 is amended by, in section 4 introductory text and section 4.1 by removing the words ''unit manufacturer's'', and in section 4.2 by removing the word ''manufacturer's''.

62. Appendix F to Part 75 is amended by revising Equation F–3 in section 2.3 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

2. Procedures for SO_2 Emissions

* * * * *

2.3 * * *

$$E_q = \frac{\sum_{h=1}^{n} E_h t_h}{2000}$$

* * * * *

Appendix F to Part 75 [Amended]

63. Appendix F to Part 75 is amended, in section 3.3.5, by removing the third sentence, and by revising section 3.5 to read as follows:

3. Procedures for NO_X Emission Rate

* * * * *

3.5 Round all NO_X emission rates to the nearest 0.001 lb/mmBtu.

Appendix F to Part 75 [Amended]

64. Appendix F to Part 75 is amended by:

a. In the definition of the variable ''Q_g'' of Equation F–20 in section 5.5.2 by revising the words ''hundred cubic feet'' to read ''hundred standard cubic feet per hour''

b. In the first sentence of sections 5.6.1, 5.6.2, and 5.7 by revising the word ''should'' to read ''shall''

c. In Equations F–21a and F–21b in sections 5.6.1 and 5.6.2 by revising the words ''Operating time at a particular unit'' in the definition of variable ''t_i'' to read ''Unit operating time'', by revising the words ''Operating time at common stack'' in the definition of variable ''t_{cs}'' with ''Common stack or common pipe operating time'', and by adding the words ''or pipe'' to the end of the definition of variable ''n''

d. Revising the definitions of variables ''HI_s'',''$_{unit}$'', and ''t_s'', and adding a new definition for ''s'' in the definition of variables of Equation F–21c in section 5.7; and

e. Adding section 5.8.

The revisions and additions read as follows:

5. Procedures for Heat Input

* * * * *

*5.7 Heat Input Rate Summation for Units with Multiple Stacks or Pipes * * **

HI_s = Heat input rate for the individual stack, duct, or pipe, mmBtu/hr.

t_{Unit} = Unit operating time, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_s = Operating time for the individual stack or pipe, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

s = Designation for a particular stack, duct, or pipe.

5.8 Alternate Heat Input Apportionment for Common Pipes

As an alternative to using Equation F–21a or F–21b in section 5.6 of this appendix, the owner or operator may apportion the heat input rate at a common pipe to the individual units served by the common pipe based on the fuel flow rate to the individual units, as measured by uncertified fuel flowmeters. This option may only be used if a fuel flowmeter system that meets the requirements of appendix D to this part is installed on the common pipe. If this option is used, determine the unit heat input rates using the following equation:

$$HI_i = HI_{CP}\left(\frac{t_{CP}}{t_i}\right)\left[\frac{FF_i t_i}{\sum_{i=1}^{n} FF_i t_i}\right] \qquad \text{(Eq. F-21d)}$$

Where:

HI_i = Heat input rate for a unit, mmBtu/hr.

HI_{CP} = Heat input rate at the common pipe, mmBtu/hr.

FF_i = Fuel flow rate to a unit, gal/min, 100 scfh, or other appropriate units

t_i = Unit operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_{CP} = Common pipe operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

n = Total number of units using the common pipe.

i = Designation of a particular unit.

Appendix F to Part 75 [Amended]

65. Appendix F to Part 75 is amended by revising the definitions of variables ''E_h'' and ''HI'' of Equation F–23 in section 7 to read as follows:

7. Procedures for SO_2 Mass Emissions at Units with SO_2 Continuous Emission Monitoring Systems During the Combustion of Pipeline Natural Gas or Natural Gas

* * * * *

E_h = Hourly SO_2 mass emission rate, lb/hr.
* * *
HI = Hourly heat input rate, as determined using the procedures of section 5.2 of this appendix, mmBtu/hr.

Appendix F to Part 75 [Amended]

66. Appendix F to Part 75 is amended by:

a. In the first sentence of section 8.1.1 by adding the word ''rate'' after each occurrence of the words ''heat input''; and

b. In section 8.1.2 by revising the definition of the variable ''t_{cs}'' of Equation F–25 and by adding definitions of the variables ''p'' and ''u'' to Equation F–25.

The revisions and additions read as follows:

8. Procedures for NO_X Mass Emissions

* * * * *

8.1.2 * * *

t_{CS} = Common stack operating time for hour h, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator). (For each hour, t_{cs} is the total time during which one or more of the units which exhaust through the common stack operate.).

* * * * *

p = Number of units that exhaust through the common stack.
u = Designation of a particular unit.

* * * * *

67. Appendix G to Part 75 is amended as follows:

a. In the text following the variables in Equation G–1 (the first sentence of which begins with the phrase, ''Collect at least one fuel sample during each week that the unit combusts coal''), designate the first two sentences as section 2.1.1; designate the third sentence as section 2.1.2; and designate the fourth through last sentences as section 2.1.3;

b. In newly designated section 2.1.2, revising the word ''sampling'' to read ''sample''

c. In section 2.2.3 designate the equation as ''(Eq. G–2).''; and

d. Revising section 2.3, by revising the definition of variable ''F_c'' of Equation G–4, and by adding a definition of the variable ''$MWCO_2$'' in Equation G–4.

The revisions and additions read as follows:

Appendix G to Part 75—Determination of CO_2 Emissions

2. Procedures for Estimating CO_2 Emissions from Combustion

* * * * *

2.3 In lieu of using the procedures, methods, and equations in section 2.1 of this appendix, the owner or operator of an affected gas-fired or oil-fired unit (as defined under § 72.2 of this chapter) may use the following equation and records of hourly heat input to estimate hourly CO_2 mass emissions (in tons).

(Eq. G–4) * * *

MW CO_2 = Molecular weight of carbon dioxide, 44.0 lb/lb-mole.
F_c = Carbon based F-factor, 1040 scf/mmBtu for natural gas; 1,420 scf/mmBtu for crude, residual, or distillate oil; and calculated according to the procedures in section 3.3.5 of appendix F to this part for other gaseous fuels.

* * * * *

Appendix G to Part 75 [Amended]

68. Appendix G to Part 75 is amended by revising the introductory text of section 3.1.2 and by revising the definition of ''%R'' in Equation G–7 to read as follows:

3. Procedures for Estimating CO_2 Emissions from Sorbent

* * * * *

3.1.2 In lieu of using equation G–5, any owner or operator who operates and maintains a certified SO_2-diluent continuous emission monitoring system (consisting of an SO_2 pollutant concentration monitor and an O_2 or CO_2 diluent gas monitor), for measuring and recording SO_2 emission rate (in lb/mmBtu) at the outlet to the emission controls and who uses the applicable procedures, methods, and equations such as those in EPA Method 19 in appendix A to part 60 of this chapter to estimate the SO_2 emissions removal efficiency of the emission controls, may use the following equations to estimate daily CO_2 mass emissions from sorbent (in tons).

* * * * *

(Eq. G–7) * * *

%R = Overall percentage SO_2 emissions removal efficiency, calculated using equations such as those in EPA Method 19 in appendix A to part 60 of this chapter, and using daily instead of annual average emission rates.

* * * * *

Appendix G to Part 75 [Amended]

69. Appendix G to Part 75 is amended by:

a. Removing and reserving sections 5.1 and 5.1.1;

b. Revising section 5.2; and

c. Revising Table G–1 in section 5.2.2.

The revisions read as follows:

5. Missing Data Substitution Procedures for Fuel Analytical Data

* * * * *

5.1 [Reserved]
5.1.1 [Reserved]

* * * * *

5.2 Missing Carbon Content Data

Use the following procedures to substitute for missing carbon content data.

* * * * *

TABLE G-1. -- MISSING DATA SUBSTITUTION PROCEDURES FOR MISSING CARBON CONTENT DATA

Parameter	Missing data value
Oil and coal carbon content	Most recent, previous carbon content value available for that type of coal, grade of oil, or default value, in this table
Gas carbon content	Most recent, previous carbon content value available for that type of gaseous fuel, or default value, in this table
Default coal carbon content	Anthracite: 90.0 percent
	Bituminous: 85.0 percent
	Subbituminous/Lignite: 75.0 percent
Default oil carbon content	90.0 percent
Default gas carbon content	Natural gas: 75.0 percent
	Other gaseous fuels: 90.0 percent

* * * * *

PART 75—[AMENDED]

70. In part 75, revise all references to ''low mass emission unit'' to read ''low mass emissions unit''.

[FR Doc. 02–11450 Filed 6–11–02; 8:45 am]

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Federal Register

Wednesday,
June 12, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7214–9]

RIN 2060–AE41

National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for primary copper smelting. Primary copper smelters can potentially emit significant amounts of certain toxic metals listed as hazardous air pollutants (HAP) in Clean Air Act (CAA) section 112(b)(1). These metals include antimony, arsenic, beryllium, cadmium, cobalt, lead, manganese, nickel and selenium. Exposure to these substances has been demonstrated to cause adverse health effects such as diseases of the lung, kidney, central nervous system, and cancer. The final rule establishes emissions limitations and work practice standards for primary copper smelters that are (or are part of) a major source of HAP emissions and that use batch copper converters. The standards reflect the application of the maximum achievable control technology (MACT). When fully implemented, we estimate the rule will reduce annual nationwide HAP emissions from the source category by approximately 23 percent or 22 megagrams per year.

EFFECTIVE DATE: June 12, 2002.

ADDRESSES: Docket No. A–96–22 contains supporting information used in developing the rule. 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: Mr. Eugene Crumpler, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC, 27711, telephone number (919) 541–0881, facsimile number (919) 541–5450, electronic mail address ''crumpler.gene@epa.gov''.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of the rule. 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 rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See CAA section 307(d)(7)(A).) Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules 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.

Judicial Review. Today's action constitutes final administrative action on the proposed NESHAP for primary copper smelting (63 FR 19582, April 20, 1998; 65 FR 39326, June 26, 2000). Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 12, 2002. Under CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Regulated Entities. Entities potentially regulated by this action are primary copper smelters (North American Industry Classification System (NAICS) Code 331411 Primary Smelting and Refining of Copper). No federal government entities nor State/local/tribal government entities are regulated by this rule.

This description of the regulated entities 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 § 63.1440 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information in this preamble is organized as follows:

I. Background
- A. What Is the Statutory Authority for NESHAP?
- B. What Criteria Are Used in the Development of NESHAP?
- C. How Did We Develop the Rule?
- D. How Has the Copper Industry Changed Since Rule Proposal?

II. Summary of Final Rule and Changes Since Proposal
- A. Who Must Comply With This Rule?
- B. What Sources at Primary Copper Smelters Are Affected?
- C. When Must an Affected Source Comply With the Standards?
- D. What Are the Emission Limits and Work Practice Standards?
- E. What Are the General Compliance Requirements?
- F. How Is Initial Compliance Demonstrated?
- G. How Is Continuous Compliance Demonstrated?
- H. What Are the Notification, Recordkeeping, and Reporting Requirements?

III. Summary of Health, Environmental, Energy, and Economic Impacts
- A. What Are the Health Impacts?
- B. What Are the Air Emission Reduction Impacts?
- C. What the Other Non-air Environmental and Energy Impacts?
- D. What Are the Cost and Economic Impacts?

IV. Summary of Responses to Major Comments
- A. How Did We Select the Emission Limit for Sulfuric Acid Plant Tail Gas?
- B. How Did We Select the Emission Limit for Process Fugitive Emissions?
- C. How Did We Select MACT Floor for Pierce-Smith Converters?
- D. Why Did We Modify the Test Protocol Used to Determine Compliance With the Opacity Limits for Existing Copper Converter Departments?
- E. How Did We Select the Final Opacity Limits for Existing Copper Converter Departments?
- F. Why Did We Change the Compliance Date for Existing Sources?
- G. Why Did We Change the Inspection and Monitoring Requirements?
- H. Is the Kennecott Utah Copper Smelter a Major or Area Source of HAP Emissions?
- I. To What Extent Was the Kennecott Utah Copper Smelter Considered in the MACT Floor Determinations for

New and Existing Sources?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

I. Background

A. What is the Statutory Authority for NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final NESHAP, ''primary copper smelting,'' was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy 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. 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 CAA section 112(d)(3). In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that 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 in the category or subcategory (or the best performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

C. How Did We Develop the Rule?

We proposed the NESHAP for the primary copper smelting source category on April 20, 1998 (63 FR 19582). A 90-day comment period was provided for the proposed rule. We received a total of 11 comment letters. A copy of each of these comment letters is available in the docket for this rulemaking (Docket No. A–96–22).

After our review and evaluation of the comments and additional information we collected after proposal, we decided that several changes to our proposed rule were appropriate. On June 26, 2000, a supplemental proposal to the rule was published in the **Federal Register** (65 FR 39326). Specifically, we proposed a particulate matter emission limit for sulfuric acid plants used at primary copper smelters to control the process off-gas discharged from the smelting and converting operations. We also proposed a limit on bag leak detector alarms for those baghouses used to comply with the particulate emission limit standards under the rule. A 60-day comment period was provided for the supplemental proposal. We received a total of eight comment letters regarding our supplement to the proposed rule. A copy of each of these letters also is available in Docket No. A–96–22.

All of the comments regarding the primary copper smelter NESHAP were reviewed and carefully considered. To clarify and obtain additional information about some specific comments, we held follow-up discussions with individual commenters. The promulgated rule reflects our full consideration of all the comments we received on the initial and supplemental rule proposals.

D. How Has the Copper Industry Changed Since Rule Proposal?

Since proposal of the NESHAP for the primary copper smelting source category, several changes have occurred in the copper industry in the United States. First, corporate ownership has changed for three of the primary copper smelters potentially subject to the NESHAP. The smelter near Miami, Arizona, owned and operated by the Cyprus Miami Mining Corporation during the time we were developing the proposed rule, is now owned by the Phelps Dodge Corporation. The name of this smelter is now the Phelps Dodge Miami smelter. The smelters located in Hayden, Arizona and El Paso, Texas were owned and operated by Asarco Incorporated at the time of rule proposal. As a result of a corporate merger, Asarco is now a subsidiary of Groupo Mexico, S.A. de C.V., the third largest producer of copper in the world.

Second, since proposal of the rule, four of the smelters potentially subject to the NESHAP have suspended operations and are not producing copper: the Asarco smelter in El Paso, Texas; the BHP Copper smelter near San Manuel, Arizona; and both of the Phelps Dodge smelters in New Mexico. At this time, it is unknown when and even if these smelters will resume production.

II. Summary of Final Rule and Changes Since Proposal

After the proposal of the NESHAP for primary copper smelters, the EPA adopted a new ''plain language'' format for all rulemakings. Accordingly, we have revised the organization, wording style, and presentation of the final rule. While these changes to the rule make it appear substantially different from the proposed rule, most of the technical and administrative requirements remain the same as proposed. In addition, for the final rule, we are correcting the name of the source category as published in the proposed rule from primary copper smelters to primary copper smelting, which is the way the source category name appears on the source category list and promulgation schedule.

A. Who Must Comply With This Rule?

The final rule applies to any owner or operator of a primary copper smelter that is a major source of HAP emissions and uses batch copper converters. A batch converter is a cylindrical vessel in which copper matte produced by the flash smelting of copper ore concentrates is oxidized in discrete batches following a sequence of steps consisting of charging, blowing, skimming, and pouring. Examples of batch converters are Pierce-Smith converters and Hoboken converters. A smelter that uses batch converters but is not a major source of HAP emissions is not subject to the rule.

For the final rule, we changed the definition of ''primary copper smelter'' to be consistent with the definition that is used in two related rules applicable to primary copper smelters. These are 40 CFR part 60, subpart P, Standards of Performance for Primary Copper Smelters, and 40 CFR part 61, subpart O, National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters. A primary copper smelter is defined as any installation or intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques.

B. What Sources at Primary Copper Smelters Are Affected?

The final rule establishes standards for: (1) Copper concentrate dryers; (2) smelting furnaces; (3) slag cleaning vessels; (4) batch converters; and (5) fugitive dust sources associated with the handling, transfer, and storage of copper concentrate, dross, reverts, slag, speiss, and other solid copper-bearing materials.

C. When Must an Affected Source Comply With the Standards?

For the final rule, the compliance date for existing sources is 3 years from June 12, 2002. An affected source is an existing source if its construction began before April 20, 1998. An affected source is a new source if its construction or reconstruction began on or after April 20, 1998. An affected source has been reconstructed if it meets the definition of ''reconstruction'' in 40 CFR 63.2. A new or reconstructed source must be in compliance on June 12, 2002, or, if it is not yet operational, upon initial startup of the source.

D. What Are the Emission Limits and Work Practice Standards?

1. Copper Concentrate Dryers

The emission limit for an existing copper concentrate dryer is no more than 50 milligrams per dry standard cubic meter (mg/dscm) of total particulate matter, as measured by Method 5—Determination of Particulate Emissions From Stationary Sources in 40 CFR part 60, appendix A. The emission limit for a new copper concentrate dryer is no more than 23 mg/dscm of total particulate matter, as measured by Method 5.

2. Smelting Furnaces

We changed the proposed emission limit (in the supplemental proposal) for the by-product sulfuric acid plant tail gas from a limit on total particulate matter to a limit on nonsulfuric acid particulate matter. Under the final rule, nonsulfuric acid particulate matter in the tail gas discharged to the atmosphere from sulfuric acid plant can be no more than 6.2 mg/dscm, as measured by Method 5B—Determination of Nonsulfuric Acid Particulate Matter From Stationary Sources in 40 CFR part 60, appendix A.

A second revision to the standards for smelting furnaces is the particulate matter emission limit for process fugitive emissions from matte and slag tapping. The limit has been changed from 16 mg/dscm to 23 mg/dscm of total particulate matter, as measured by Method 5. The value of this emission limit was changed based on our reconsideration of the test data.

3. Slag Cleaning Vessels

The standards for slag cleaning vessels have been revised to be consistent with changes discussed above that we made for the process off-gas and process fugitive emission limits for smelting furnaces. The final standard requires that the process off-gas from slag cleaning vessels be vented to a sulfuric acid plant that meets a 6.2 mg/dscm emission limit for nonsulfuric acid particulate matter (as measured by Method 5B). As an alternative to meeting this standard, an owner or operator may choose to vent the process off-gas from the slag cleaning vessel to a wet scrubber that meets a 46 mg/dscm emission limit for total particulate matter (as measured using Method 5). The particulate matter limit for process fugitive emissions generated by tapping molten material from the slag cleaning vessel is revised to be consistent with the standard for smelting furnaces (23 mg/dscm of total particulate matter, as measured by Method 5).

4. Copper Converter Departments

Where applicable, the standards for batch converters have been revised to be consistent with the final particulate matter emission limits for process off-gas and process fugitive emissions from smelting furnaces. Process off-gas captured during converter blowing must be vented to the smelter's sulfuric acid plant that meets the 6.2 mg/dscm emission limit for nonsulfuric acid particulate matter. The particulate matter limit for process fugitive emissions generated by converter operations is set at 23 mg/dscm of total particulate matter, as measured by Method 5.

We also made several revisions to the proposed opacity limit requirements for copper converter departments. First, we modified the test protocol used to determine compliance with the applicable opacity limit. We revised how the field opacity data are compiled and averaged in order to reduce the duration of the observation period needed to obtain the required number of acceptable opacity readings. The test protocol in the final rule requires that the average opacity value for the affected source be calculated using a minimum of 120 1-minute intervals during which at least one copper converter was blowing and there were no visible emission interferences as specified in the rule (i.e., during the 1-minute interval, there were no other copper production events generating visible emissions inside the converter building that potentially could interfere with the visible emissions from the converter capture systems as seen by the outside observers).

Next, considering the above revision to the test protocol, we decided it was necessary to reexamine the test data used to establish the opacity limit for existing Pierce-Smith converters to determine the effect of using the new protocol on the proposed opacity limit. Based on this analysis, we changed the opacity limit for existing Pierce-Smith converter departments to 4 percent opacity. In the final rule, the opacity limit for existing Hoboken copper converter departments is the same value as proposed, 4 percent opacity.

Finally, we have reconsidered the selection of new source MACT for copper converter departments by applying the level of process fugitive emissions control achieved by the best controlled similar source, flash converting technology. Based on this new source MACT for copper converting operations, we have selected, as the final standard for new sources, a work practice standard that prohibits altogether the operation of batch copper converters at new copper converter departments subject to the rule.

5. Fugitive Dust Sources

The final standards for fugitive dust sources are the same as proposed with one change. We added the requirement that the fugitive dust control plan, which the smelter owner or operator is required to prepare and adhere to at all times, must be approved by the State with delegated authority for enforcement. For the purpose of complying with the final rule, an existing fugitive dust control plan may be used, provided that this plan addresses the fugitive dust sources and includes the information specified in the rule. An existing fugitive dust control plan that meets these conditions and also has been incorporated into a State implementation plan is considered

to be approved for the purpose of complying with this requirement.

6. Alternative Emission Limit for Combined Gas Streams

The equation in the final rule that an owner or operator can elect to use to determine an alternative or equivalent particulate matter emission limit for gas streams combined from two or more affected sources has been corrected to include a potential control situation that was inadvertently omitted at proposal. For the final rule, the equation includes a component to address the situation where the off-gas stream exhausted from a slag cleaning vessel is not vented to the sulfuric acid plant or a dedicated wet scrubbing system, but instead is combined with other gas streams and vented to a common particulate control device.

E. What Are the General Compliance Requirements?

A new section is added to the final rule listing the general requirements for complying with the rule. The owner or operator must be in compliance with each applicable particulate matter emission limit and work practice standard at all times, except during periods of startup, shutdown, and malfunction. Each smelter owner or operator must develop and implement a written startup, shutdown, and malfunction plan for the smelter according to the general provisions of 40 CFR part 63 and the additional requirements specified in the rule.

Compliance with the opacity limits for copper converter departments is determined using the test protocol and requirements specified in the rule. The general provision requirements for compliance with opacity and visible emission standards under 40 CFR 63.6(h) do not apply to the opacity limit standards for copper converter departments.

F. How Is Initial Compliance Demonstrated?

Initial compliance with each of the particulate matter emission limits is to be determined by a performance test conducted according to 40 CFR 63.7 of the general provisions and specific EPA reference test methods. The average of three test runs is to be used to determine compliance with each of the applicable emission limits specified in the rule. During each initial performance test, the owner or operator is also required to establish limits for appropriate control device operating parameters based on the actual values recorded during the performance test.

We reconsidered our proposed requirements for when an owner or operator must conduct a performance test and decided it is appropriate to require periodic testing beyond the initial performance test to reaffirm compliance with the applicable emission limitation. Under the final rule, compliance with each applicable particulate matter emission limit must be demonstrated initially and, thereafter, at least once per year.

G. How Is Continuous Compliance Demonstrated?

To demonstrate continuous compliance with the applicable emission limitations and work practice standards under the final rule, an owner or operator must perform periodic inspections and continuous monitoring of air pollution control devices used to comply with the rule. In those situations when a deviation from the operating limits specified for a control device or capture system is indicated by the monitoring system, or when a damaged or defective component is detected during an inspection, the owner or operator must implement the appropriate corrective actions. Monthly visual inspections of all capture systems used to comply with the rule are required. Minor revisions to the procedures for these inspections were made for the final rule.

Each baghouse used to comply with a total particulate matter emission limit must be operated according to written operating and maintenance procedures that describe in detail the procedures to be used for inspection, maintenance, bag leak detection, and corrective action for the baghouse. The final rule includes the requirement as proposed in the supplemental proposal for an alarm operating limit on baghouse leak detectors. We have made minor revisions to the procedures used for inspection, maintenance, bag leak detection, and corrective action for baghouses so that the rule is consistent with the requirements for baghouses in other NESHAP.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires the notification, recordkeeping, and reporting requirements in the general provisions to 40 CFR part 63 with one exception. The notification, recordkeeping, and reporting requirements in the general provisions related directly to compliance with opacity and visible emission standards as specified in 40 CFR 63.6(h) do not apply to this rule. The specific recordkeeping and reporting requirements for documenting compliance with the opacity limit provisions are specified in the rule. The dates by which the notifications and reports must be submitted to us (or the applicable delegated State authority) are specified in the rule.

Each affected owner or operator must submit a semiannual compliance report containing the information specified in the rule. The final rule requires that this report be submitted whether a deviation has or has not occurred during the reporting period. However, only summary information is required if no deviation occurred. The rule does not require emergency reports if actions taken are consistent with the smelter's startup, shutdown, and malfunction plan. If actions taken are not consistent with this plan, the events and the response are to be included in the semiannual compliance report.

III. Summary of Health, Environmental, Energy, and Economic Impacts

A. What Are the Health Impacts?

The HAP emitted from primary copper smelters include compounds of antimony, arsenic, beryllium, cadmium, cobalt, lead, manganese, nickel, and selenium. The HAP metal compounds controlled by this rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., diseases of the lung, kidney, central nervous system), and acute health disorders (e.g., lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system). Arsenic and nickel compounds have been classified by the EPA as human carcinogens, and compounds formed from four other HAP metals (beryllium, cadmium, lead, and nickel) have been classified as probable carcinogens.

Emission data collected during development of the rule indicate that the HAP emitted in the largest quantities are arsenic and lead compounds. Exposure of humans to arsenic by inhalation or by ingestion has been shown to be associated with forms of lung, bladder, liver, and other cancers. Brain damage, kidney damage, and gastrointestinal distress may occur from acute exposure to high levels of lead in humans. Chronic exposure to lead by humans results in effects on the central nervous system, blood, blood pressure, and kidneys.

We do not have the detailed data on each of the primary copper smelters potentially subject to this rule or the people living around the facilities

necessary to determine the actual population exposures to the HAP emitted from these smelters and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the rule will reduce emissions and subsequent exposures.

B. What Are the Air Emission Reduction Impacts?

Current nationwide HAP emissions from the three currently operating primary copper smelters potentially subject to the final rule are estimated to be about 96 megagrams per year (Mg/yr). We estimate that implementation of the final rule will reduce these nationwide HAP emissions by approximately 23 percent or 22 Mg/yr.

C. What Are Other Non-air Environmental and Energy Impacts?

With only three of the potentially regulated smelter operating at this time, one of the affected smelters will need to install additional air pollution control equipment to meet the copper converter department standards. The additional controls at this smelter consists of doubling the converter secondary hood ventilation rate and venting the secondary hoods to a new baghouse (fabric filter). The non-air environmental impacts associated with operating these new controls will be a small increase in the amount of solid waste generated at each smelter from the particulate matter collected in the new baghouse. Operation of the fans used to increase the converter secondary hood ventilation rates will result in a small increase in overall smelter electricity usage. No significant adverse solid waste or energy impacts are expected as a result of operating these additional air pollution controls.

D. What Are the Cost and Economic Impacts?

Costs to smelter owners and operators for complying with the final rule were estimated. As noted above, one smelters will need to install additional air pollution control equipment to meet the copper converter department standards. The total capital costs for the purchase and installation of this additional control is estimated to be $4.1 million. Total annual costs of meeting all of the requirements of the rule, including operating and maintenance costs, are estimated to be $860,000 per year.

The economic impact of the rule is determined by comparing the annualized costs incurred by each smelter to their estimated annual copper production revenues. The share of costs to estimated revenues for the affected smelters range from a low of 0.004 percent to a high of 0.2 percent. Thus, compared to the estimated production revenues for each affected smelter, the total annualized costs are minimal. Based on the smelter-specific total annual cost to sales ratios, impacts of the final rule on the companies owning the facilities are anticipated to be negligible. The economic impact analysis we prepared to support this finding is available in Docket No. A–96–22.

IV. Summary of Responses to Major Comments

A summary of our responses to selected major comments received on the proposed rule (including the supplemental proposal) is presented below. Our responses to all of the substantive public comments on the proposal are presented in the document titled *National Emission Standards for Hazardous Air Pollutant (NESHAP) for Primary Copper Smelters: Background Information Document for Promulgated Standards* (BID). The BID is available in Docket No. A–96–22.

A. How Did We Select the Emission Limit for Sulfuric Acid Plant Tail Gas?

Comment. Seven commenters disagreed with our proposal to establish a particulate emission limit for the tail gas exhaust from the by-product sulfuric acid plants used to treat the process off-gases discharged from smelting furnaces, slag cleaning vessels, and batch converters. Reasons cited include: (1) Method 5 is an inappropriate test method for measuring HAP concentrations in acid plant tail gas because Method 5 measures as particulate matter material that is not HAP (i.e., sulfuric acid mist and waters of hydration); and (2) the proposed numerical limit is based on data for only four sources not the five best performing sources as is required by CAA section 112 for establishing MACT.

Response. For the process off-gases discharged from smelting furnaces, slag cleaning vessels, and batch converters, we originally proposed an equipment standard that would require these sulfur dioxide rich process off-gases to be vented to a by-product sulfuric acid plant with its ancillary particulate matter precleaning and conditioning systems, or other type of sulfur recovery process unit capable of achieving comparable levels of particulate matter removal. At the time of proposal, all six smelters in the source category operated by-product sulfuric acid plants.

After careful review and evaluation of comments received objecting to our use of an equipment standard rather than a numerical emission limit and new emissions data obtained since proposal, we concluded that a change in the proposed standards for process off-gas emissions was warranted. As a result, we issued a supplement to the proposed rule (65 FR 39326, June 26, 2000) in which we proposed a numerical emission standard that would limit the concentration of total particulate matter in the off-gases discharged. Specifically, we proposed to set a total particulate matter emission limit for acid plant tail gas of 23 mg/dscm based on Method 5 measurements.

In response to the commenters' concerns regarding the use of total particulate matter as the surrogate for HAP and the use of Method 5 for determining compliance, we examined more closely the suitability of Method 5 for measuring particulate matter in tail gas from sulfuric acid plants at primary copper smelters. Method 5 is the basic reference test method used for determining particulate matter emissions from stationary sources. The sampling probe and filter temperature specified for Method 5 (250°F) is below the acid dewpoint for sulfuric acid. Consequently, when sampling sulfuric acid plant tail gas by Method 5, condensed sulfuric acid mist and waters of hydration not driven off at the sampling temperature are included in the probe wash and filter catch, along with any metal HAP contained in the tail gas. Thus, we agree that establishing and determining compliance with a total particulate matter emission limit based on Method 5 may include sulfuric acid mist condensables not related to the control or emissions of metal HAP. Based on some limited test data obtained using Arizona Method A1 (a test method adopted by the State of Arizona for measuring particulate matter in sulfur containing gas streams that excludes acid condensate), the condensate may account for as much as 12 percent of the total particulate catch.

Method 5B was developed specifically to measure nonsulfuric acid particulate matter in circumstances when appreciable quantities of condensable sulfuric acid are present in the stack exhaust to be tested. The procedure is identical to Method 5 except that the front-half of the Method 5 sampling train is maintained at 320°F instead of 250°F, and the probe and filter samples are to be heated in a oven to 320°F for 6 hours prior to weighing. At the higher sampling temperature, most of the sulfuric acid mist and waters of hydration present pass

through the probe and filter without condensing. Heating the probe wash residues and sample filter in an oven before weighing volatilizes any condensed sulfuric acid that may have collected in the front-half. Because sulfuric acid mist and waters of hydration are not counted as part of the total particulate catch, the total particulate matter concentration value measured in the front-half by Method 5B will be lower than the concentration value that would have been measured on the filter using Method 5. Given the gas stream characteristics of sulfuric acid plant tail gas, it is our conclusion that Method 5B is the appropriate test method to use for setting a particulate matter concentration limit that serves as a surrogate for metal HAP emissions contained in the tail gas from sulfuric acid plants.

Lacking any available Method 5B emissions test data to set an emission limit, we convened a meeting with company representatives of each of the six smelters potentially subject to the NESHAP. Two options were considered: (1) Derive an emission limit based on the available Method 5 test data and a conversion factor inferred from the limited Arizona Method 1A test data; or (2) gather actual Method 5B test data by testing each of the operating by-product sulfuric acid plants. The consensus view was that Method 5B testing was needed to establish a credible emission limit.

A test program was planned and implemented jointly by us and the companies owning the three copper smelters currently producing copper. The source tests were conducted by an independent consultant hired by the smelter companies. Four individual test runs were conducted at each of the three smelters. To our best knowledge, all of the tests were conducted at normal smelter production levels and under normal acid plant operating conditions.

We considered two approaches in selecting the level of the standard: (1) Base the emission limit on the highest credible individual run measured at the three smelters; or (2) base the limit on the highest three-run average measured at the highest emitting smelter. If we base the emission limit on the highest individual run, the standard expressed in concentration units would be 6.2 mg/dscm. If we base the emission limit using the highest three-run average (highest single performance test), the standard would be 5.0 mg/dscm.

In selecting the appropriate level for the emission limit, consideration was given to the full range of smelter process and acid plant operating conditions which could reasonably be foreseen to recur, under which the standard is to be achieved. This is especially important where the emission limit is applied to a gas stream in which the outlet loading will typically fluctuate within a range of values during the course of normal operations. After examining the design and operating conditions of the three acid plants tested, we can find no discernible differences among the three plants which would lead us to conclude that one is superior or inferior to another. In addition, we believe that each test run was conducted under conditions representative of acceptable sulfuric acid plant performance.

Based on the above considerations, we believe that the performance of the sulfuric acid plant under a reasonable worst case circumstance is best represented by the single highest individual run, and that selecting this highest value will ensure that the standard will be met under all foreseeable acceptable operating conditions. Therefore, we are selecting 6.2 mg/dscm of nonsulfuric acid particulate matter based on measurements using Method 5B as the emission limit for the sulfuric acid plant tail gas.

B. How Did We Select the Emission Limit for Process Fugitive Emissions?

Comment. Four commenters stated that the proposed emission limit of 16 mg/dscm for the process fugitive emissions from smelting furnaces, slag cleaning vessels, and batch converters is overly stringent and is not representative of the MACT floor. The commenters claimed that the source test data we used to select the value consisted of only a few source tests, and that these tests do not account for the range of variability in emissions associated with normal operating conditions. The commenters recommended that the value of the standard be increased to 50 mg/dscm which is consistent with the particulate matter emission limit we proposed for existing copper concentrate dryers.

Response. We selected the application of baghouses as MACT for controlling process fugitive HAP emissions based on the control devices used to control fugitive emissions (i.e., secondary emissions) from batch converters (63 FR 19595 and 19597, April 20, 1998). Four of the five smelters that use secondary hoods to capture the converter fugitive emissions vent the captured gas stream to a baghouse for control. The fifth smelter employs an electrostatic precipitator (ESP). Because the common practice at the smelters is to vent the emissions captured by the hoods over the smelting and slag cleaning vessel tapping ports to the same control device used to control converter secondary emissions, we also selected use of baghouses as the MACT floor for controlling process fugitive emissions from the matte and slag tapping operations at the smelting furnaces and slag cleaning vessels. Consistent with other NESHAP based on application of baghouses as MACT for control of particulate matter emissions, we selected concentration units as the format of the standard.

The data used to select the proposed emission limit consist of results from four performance tests, one test for each of the four smelters employing baghouses for the control of converter secondary emissions. Each test is comprised of three test runs conducted at the baghouse outlets using Method 5.

For the proposed emission limit, we selected the highest average concentration (16 mg/dscm) measured among the four performance tests. Since proposal, we have reexamined the data and our approach to setting the standard. A close review of each of the performance tests shows a high degree of variability and imprecision among individual test runs within a performance test, with the highest measured values ranging from 1½ to 4½ times the lowest measured values. Given the lack of precision among the test results, we reconsidered whether relying on the highest three-run average measured at one smelter truly accounts for the full range of acceptable process and control device operating conditions which could be reasonably foreseen to recur. We believe that a more conservative and, perhaps, better approach in this case is to set the standard based on the highest single credible test run. This will provide better assurance that the standard is achievable under reasonable worst case circumstances. Of the 12 individual test runs, the value of the highest run and the value selected for the final standard is 23 mg/dscm.

C. How Did We Select MACT Floor for Pierce-Smith Converters?

Comment. Several commenters disagreed with our MACT floor determination for existing Pierce-Smith converters. The commenters claimed that CAA section 112(d)(3) requires us to determine the MACT floor for existing sources based on applicable ''emissions limitations'' rather than relying on actual emissions data as we did for the proposed rule. Using an emissions limitations approach based on application of existing State regulations, the commenters concluded that the opacity limit for existing Pierce-

Smith converters should be established at a value of 40 percent opacity.

Response. We disagree with the commenters' assertion that CAA section 112(d)(3) requires us to establish MACT floors for existing sources based on applicable ''emissions limitations.'' We have and continue to use several approaches to establishing MACT floors, depending on the type and quality of the available information. Typically, we examine several approaches and rely on the one best suited for each particular circumstance. The approaches include: (1) Reliance on information such as test data on actual emissions from the pool of sources (the best five sources or best 12 percent) that comprise the best performers; (2) information on applicable emissions limitations or standards specified in State and local regulations and/or operating permits; or (3) a technology approach based on the application of a specific control technology and accompanying performance data. We believe that each of these approaches has merit, and we have relied on using each to various degrees throughout the MACT program.

The emissions limitations approach to establish the MACT floor for Pierce-Smith converters was examined at proposal and dismissed. Of the five smelters in the source category that operate Pierce-Smith converters, only three are subject to an emissions limitation. The converter building at one smelter is subject to a zero percent opacity limit specified in the facility's operating permit. The converter buildings at the two smelters located in Arizona are arguably subject to the State's general 40 percent opacity limit applicable to process fugitive emissions from any source. The converter buildings at the remaining two smelters, both located in New Mexico, are not subject to an opacity limit. Then and now, the commenters supported establishing the MACT floor based on the median or third most stringent emissions limitation. Using this approach, the MACT floor would be 40 percent opacity.

The emissions limitation approach advanced by the commenters is workable only when the outcome produces a realistic inference of actual performance of the best performing sources. This has been affirmed unequivocally by the DC Circuit Court in *Sierra Club* vs. *EPA, 167F.3d.* in which the court opined that to comply with the statute, the EPA's method of setting emissions floors must reasonably estimate the performance of the relevant best performing sources. Observations made by us and the industry at all five of the smelters operating Pierce-Smith converters indicate that actual visible emissions from the converter buildings are typically in the range of zero percent to 10 percent opacity, well below the 40 percent opacity value supported by the commenters. Consequently, we believe that the use of the emissions limitation approach in this case is not appropriate.

Comment. The same commenters making the above comment further stated that if test data on actual emissions is used for determining the MACT floor for Pierce-Smith converters, then the average emissions limitation should be represented by the emissions data for the median performing source of the five best performing sources rather than the average of the emissions data for all five sources as was done for the proposed standard. In this case, the commenters claimed that the median technology for Pierce-Smith converters is the use of primary and secondary ventilation systems for the prevention and capture of emissions coupled with air pollution control devices for sulfur dioxide and particulate matter control. The commenters identified the controls used at the Hayden and Hidalgo smelters as the median technology for Pierce-Smith converters.

Response. We assessed how using the median technology approach would affect the selection of the MACT floor for Pierce-Smith converters. To do so, we evaluated each of the five smelters operating Pierce-Smith converters to determine the median performing source based on both performance data and engineering design. Using either approach, our assessment shows that the Chino Mines smelter is the median performing source of the five smelters that operate Pierce-Smith converters, not the Hayden or Hidalgo smelters as suggested by the commenters. In addition, the opacity value prescribed to the Chino Mines smelter is 3 percent, the same as the value we proposed for the opacity limit for Pierce-Smith converters based on averaging opacity data for all five sources.

To select the median technology based on source performance data, we ranked the converter capture systems used at the five smelters in order of decreasing performance using the average overall opacity value for each smelter. This ranking assumes that the average opacity value is indicative of the overall capture efficiency of the control system (i.e., the lower the opacity, the higher the capture efficiency). For our assessment, we used the overall average opacity values rounded to the next highest whole percent for the five smelters used for the MACT floor determination at proposal. The results of this ranking show that the best performing source is the El Paso smelter (zero percent opacity) followed by, in decreasing order, the San Manuel smelter (1 percent opacity), the Chino Mines smelter (3 percent), the Hidalgo smelter (5 percent), and the Hayden smelter (8 percent opacity). The median performing smelter of the five smelters that operate Pierce-Smith converters is the third best performer, the Chino Mines smelter.

For the engineering design assessment, we first assembled pertinent information on the primary and secondary capture systems used at each of the five affected smelters. The information included hood ventilation rates (both primary and secondary), converter blowing rates (amount of air blown through the tuyeres into the molten bath), and detailed information on the design and physical configurations of each secondary hood.

Each of the five smelters uses the same basic approach to capturing emissions from their Pierce-Smith converter during slag and copper blows. Specifically, a retractable primary hood for capturing the voluminous process emissions generated during blowing and a fixed or sliding secondary hood for capturing the secondary or fugitive emissions that escape capture by the primary hood. Although the basic approach used at each smelter is fundamentally the same, there are, however, differences among the smelters in both the design and operation of their primary and secondary capture systems that affect performance.

The El Paso smelter uses a converter capture system design that is unique compared to the designs used at any of the other smelters. Instead of the fixed or sliding secondary hood designs used by other four smelters, each converter at the El Paso smelter is equipped with an air curtain secondary hood. The air curtain hood encloses the sides and back area around the converter mouth. During converter blowing operations, a horizontal jet of air flows across the open top of the enclosure to provide a continuous sheet or curtain of air that sweeps the process fugitive emissions into an exhaust hood, and subsequently a particulate control device. Capture efficiencies in excess of 90 percent are achieved using air curtain hood systems. Also at the El Paso smelter, any process fugitive emissions that escape capture by the air curtain hoods are further controlled by evacuating the entire converter building to a particulate control device. Thus, effectively 100 percent of the process fugitive emissions from converter operations at the El Paso smelter are captured. Clearly, the use of

air curtain secondary hoods in combination with a tertiary building evacuation system represents the best capture system technology used at any of the five smelters that operate Pierce-Smith converters.

We believe that the second best performer is the San Manuel smelter which relies primarily on primary hood ventilation to effect capture. The San Manuel smelter is unique in that it has surplus by-product acid plant capacity which allows each of the converter primary hoods to operate at a substantially higher ventilation rate than is usual for other smelters. The primary hoods at the San Manuel smelter are operated at a primary hood ventilation rate to converter blowing rate ratio of 3.8. In contrast, for the converter primary hoods at other smelters, the ratios range from 2.2 to 2.6. As evidenced by the building opacity data for the San Manuel smelter, operation of the primary hoods at a substantially higher ventilation rate results in enhanced capture efficiency and minimal fugitive emissions due to leakage about the primary hood.

Our assessment of the remaining three smelters supports our earlier finding using the performance data approach; the median or third best performing smelter is the Chino Mines smelter. All three smelters operate their primary hoods similarly and each converter is equipped with a secondary hood. Each of the secondary hoods are, with minor variations, similar in design. The principal difference is that the ventilation rate during converter blowing used for the secondary hoods at the Chino Mines smelter 120,000 standard cubic feet per minute (scfm) is approximately twice that used at the Hayden or Hidalgo smelters (50,000 scfm and 60,000 scfm, respectively). We believe that by operating at this substantially higher ventilation rate, the secondary hood system operated at the Chino Mines smelter is more effective at capturing the process fugitive emissions that escape from the converter primary hood during blowing compared to the secondary capture systems used at the other two smelters. It is, thus, our conclusion that the emissions capture system applied at the Chino Mines smelter is the third best among the five smelters that operate Pierce-Smith converters.

Regardless of whether we base our assessment of performance on average opacity or on engineering design, the smelter that uses the third best performing or median control technology is the Chino Mines smelter. If we had used the median technology approach at proposal to select the opacity limit for smelters that operate Pierce-Smith converters, we would have selected 3 percent, the same value we proposed.

D. Why Did We Modify the Test Protocol Used To Determine Compliance with the Opacity Limits for Existing Copper Converter Departments?

We received no comments on the duration of the observation period needed to obtain the required number of acceptable opacity readings specified by the proposed test protocol for determining compliance with the opacity limits for existing copper converter departments. However, based on our experience using the protocol in the field and further analysis of the data that we collected using the protocol, we decided to revise the test protocol for the final rule with respect to how the opacity data are compiled and averaged in order to reduce the duration of the observation period needed to obtain the required number of acceptable opacity readings for a compliance determination.

The proposed test protocol specified making opacity readings using Method 9 over an observation period sufficient to obtain a minimum of 20 continuous 6-minute average opacity values during times when at least one converter is blowing and none of the specific visible emissions interferences listed in the test protocol has occurred. Our experience indicates that to obtain the minimum 20 continuous 6-minute averages required by the proposed test protocol, an observation period lasting 4 to 5 days or longer would be needed. This occurs for two reasons. First, Method 9 requires an observer when making opacity readings to be positioned with the sun to the observer's back and at a position from the source such that the observer's line-of-sight is approximately perpendicular to the longer axis of the converter building. This generally limits the window for observation at a smelter to 4 to 5 hours on any given day. Second, many of the continuous 6-minute periods are invalidated due to unavoidable, normal production events that occur inside the converter building that are unrelated to the converter blowing operations but also generate visible emissions. These visible emissions can potentially interfere with the visible emissions from the converter capture systems as seen by the outside observers. Because such interferences may misrepresent the actual performance of the converter capture system at a given smelter, the opacity readings made during these periods are invalidated and excluded from the compliance determination.

We have decided to revise the test protocol to allow for a shorter, more reasonable observation period to obtain the required number of acceptable opacity readings (i.e., opacity readings when there is at least one converter blowing without any visible emissions interferences). We are revising the test protocol to require averaging a minimum of 120 acceptable 1-minute average opacity values in place of the proposed 20 acceptable 6-minute average opacity values. Under the final test protocol, compliance will be demonstrated against the average opacity recorded for a minimum of 120 1-minute averages of eight readings per minute (a team of two opacity observers, each making four readings at 15-second intervals). This revision provides the same minimum number of opacity values for a performance test (a minimum total of 120 minutes of acceptable opacity readings) as the proposed procedure, without the additional restriction that the acceptable readings also must be made in continuous 6-minute blocks. With this change, smelter owners and operators should be able to obtain the required number of acceptable opacity readings in a more reasonable 1- to 2-day observation period.

E. How Did We Select the Final Opacity Limits for Existing Copper Converter Departments?

1. Pierce-Smith Converters

Because of our decision to change the test protocol to facilitate compliance determinations, we concluded that a reexamination of the proposed opacity limit for existing Pierce-Smith converters using the new protocol was warranted to determine whether using the protocol affected the proposed, and ultimately, the final opacity limit. As specified by the new protocol, we considered all 1-minute average opacity values recorded during the field observations when at least one converter was blowing, and there were no visible emissions interferences from other copper production activities or malfunctions inside the copper converter building. Consistent with the MACT floor approach we used at proposal, we based our selection of the MACT floor on the average of the test data for the five best performing sources (in this case, all five smelters in the source category that operate Pierce-Smith converters).

The field data considered at proposal and reexamined include a compilation of visible emission observations and process data gathered in the spring of 1997 at each of the smelters operating

Pierce-Smith or Hoboken converters. A description of the field data collection and analysis procedures used to compile the data is available in the preamble to the proposed rule (63 FR 19596). In general, a sufficient number of opacity observations were obtained during the site visits to compile a data base that included for each smelter a total of 400 to 500 minutes of 1-minute average opacity readings. Not included in these data are any opacity readings made at a smelter during periods when the converter operations were judged not to be representative of normal operations (e.g., during a converter capture system malfunction) or when the opacity observation conditions did not meet Method 9 criteria (e.g., improper sun angle).

For each smelter, we prepared a data summary that listed the average opacity values for only those 1-minute intervals during which at least one of the converters was blowing, and there were no visible emissions interferences as defined by the test protocol. For four of the smelters, there are a sufficient number of acceptable 1-minute intervals to simulate two performance tests as specified by the test protocol (the total number of acceptable 1-minute intervals can be divided into two blocks with at least 120 1-minute average opacity values in each block). For the fifth smelter, we have a total of 167 minutes of acceptable 1-minute average opacity values which we treated as a single performance test. The individual performance test results are presented in the BID.

Next, we calculated the average percent opacity for each performance test for a given smelter. Each of the calculated averages that includes a fraction of a percent opacity was then rounded up to the next whole number. For the smelters having two performance tests, we selected the higher of the two recorded values as the indicator of performance for the smelter. Following this procedure, the average opacity values for the five individual smelters are, in order of increasing value, zero percent, 1 percent, 3 percent, 5 percent, and 10 percent. The arithmetic average of these five opacity values is 3.8 percent which rounds to 4 percent opacity. Therefore, we selected the MACT floor for Pierce-Smith converters to be 4 percent opacity.

In response to comments received since proposal, we have evaluated two possible beyond-the-floor alternatives for the control of Pierce-Smith converters: Alternative 1—retrofit of air curtain secondary hoods on each converter at each affected smelter to complement the primary and secondary capture systems; and Alternative 2—installation of a converter building evacuation system. Total annual costs to implement these options were estimated assuming that each of the five smelters with Pierce-Smith converters would be subject to the rule (i.e., each smelter is a major source of HAP emissions). Total capital costs for implementing Alternative 1 at the five smelters are estimated to be $41 million. Implementing Alternative 1 is estimated to reduce HAP emissions beyond the floor by 29 tpy at a total annual cost of $12 million per year or about $430,000 per ton of HAP reduction. Total capital costs for implementing Alternative 2 at the five smelters are estimated to be $93 million. Implementing Alternative 2 is estimated to reduce HAP emissions beyond the floor by 34 tpy at a total annual cost of $32 million per year or about $910,000 per ton of HAP reduction. Taking into consideration the costs of implementing either of the beyond-the-floor alternatives against the level of additional emission reduction estimated to be achieved, we concluded that neither of these beyond-the-floor alternatives is reasonable. Therefore, MACT for Pierce-Smith converters is 4 percent opacity, and we chose this value for the final standard.

2. Hoboken Converters

Comment. One commenter stated that the proposed opacity limit for existing Hoboken converters was based on a set of opacity readings that was too small to adequately reflect an achievable emission limit. Furthermore, the commenter stated that these data are not representative of normal operating conditions at the one existing smelter using Hoboken converters. The commenter submitted additional opacity data for the existing Hoboken converters. The commenter stated that these data were more representative of a two-converter operation which is typical at the smelter and requested that the data be used to recalculate the opacity limit.

Response. We examined the new data submitted by the commenter according to the revised test protocol. It is important to remember that the test protocol allows consideration of only those opacity readings that are taken during converter blowing and when no visible emissions interferences occur (as defined in the test protocol). Opacity readings during periods when visible emissions interferences occur are excluded from the calculation. Our analysis of the new data provided by the commenter yields an average opacity value of 3.8 percent which supports the 4 percent opacity limit proposed for Hoboken converters.

F. Why Did We Change the Compliance Date for Existing Sources?

Comment. Three commenters requested that the compliance date for existing sources be extended to the full 3 years allowed under the CAA. The commenters, all companies operating primary copper smelters potentially subject to the NESHAP, claimed that the control measures required to meet the requirements of the proposed rule cannot be readily implemented within the proposed 2-year period. The principal reason expressed by the commenters for extending the compliance period to 3 years is the rule will require smelters to plan and implement several significant changes, some of which cannot be completed within a 2-year period.

Response. Section 112(i)(3) of the CAA directs us to establish a compliance date for existing sources which provides for compliance with the applicable standards as expeditiously as practicable but no later than 3 years after the effective date of the standards. For the final rule, we reconsidered our proposed compliance date for existing sources subject to the primary copper smelter NESHAP. We expect that many of the existing sources that could be subject to the rule already have the type of controls in place that are needed to comply with the standards. However, we also recognize that the control systems for some existing sources subject to the rule will likely need to be upgraded to meet the standards. To allow smelter owners and operators a reasonable period of time to design, procure, install, and startup these control upgrades, we decided to establish the compliance date for existing sources under the final rule at no later than 3 years after promulgation.

G. Why Did We Change the Inspection and Monitoring Requirements?

1. Batch Converter Capture System Inspection Requirements

Comment: Three commenters stated that the requirement to inspect the batch converter capture systems on a monthly basis should be limited to those components of the converter capture system that are readily accessible during normal operations. The proposed requirement to visually inspect each month all of the capture system components is not practical, if not impossible to achieve. For example, the fan blade inspection that would be required under the proposed rule can only be performed when the fan housing

is opened, and operations must be shutdown to do this. Another example is the practicality of inspecting duct components that are covered with insulation.

Response. The intended purpose of the monthly inspection is to visually check the accessible components of the capture system for any defects or damage that could diminish or impair capture system performance from the level that the capture system is capable of achieving when it is properly operated and maintained. We also recognize that certain components of the capture system, such as the examples cited by the commenters, cannot be inspected by workers without shutdown of the process or disassembling components. It would be impractical to inspect these components on a monthly basis. In the final rule, we have revised the wording of the visual inspection requirement for capture systems to clarify which capture system components are to be inspected on a monthly basis. The final rule specifies that the owner or operator inspect those components of the capture system that can affect the performance of the system to collect the gases and fumes emitted from the affected source (e.g., hoods, exposed ductwork, dampers, pressure senors, damper switches). During each inspection, the inspector must visually check the physical appearance of the equipment (e.g., presence of holes, dents, or other damage in hoods or ductwork) and check the settings for each damper and other devices which can be adjusted to control flow in the capture system.

2. Operating Limit for Baghouse Leak Detector Alarms

Comment. Six commenters objected to our proposed 5 percent limit on baghouse leak detector alarms during each 6-month reporting period. Reasons cited included: (1) The use of baghouse leak detectors for baghouses operated at copper smelters is unproven technology; (2) the selection of the proposed alarm time limit is arbitrary; (3) experience of commenters has shown that the detectors are subject to false alarms; (4) any limit on baghouse leak detector time should not include alarms during periods of startup, shutdown, or malfunction; and (5) what the EPA means by ''initiation of corrective action'' is not clear for the purpose of counting the elapsed alarm time.

Response. The use of baghouse leak detectors is a proven technology that can provide an effective means for early detection of bag failures allowing the baghouse operator to take timely action to correct the problem and minimize excessive particulate matter emissions that would result if the problem was not promptly addressed. These detectors currently are used for baghouse applications at primary lead smelters and other metallurgical facilities with gas stream characteristics and operating conditions similar to those control situations at primary copper smelters for which an owner or operator also may choose to use a baghouse to comply with the rule requirements. We believe that there is no reason why baghouse leak detectors cannot similarly be used on baghouses at primary copper smelters.

The selection of the limit value for alarm time is not arbitrary. We selected this value based on our judgement of an upper limit to the number of alarms that can reasonably be expected to occur (excluding false alarms) over a 6-month period for a baghouse for which the owner or operator implements good inspection and maintenance practices.

We reviewed the proposed language for use of baghouse leak detectors with respect to concerns raised by the commenters about false alarms. For the final rule, we have revised the requirements for baghouse leak detectors to be consistent with the requirements we promulgated for the Primary Lead Smelting NESHAP under 40 CFR part 63, subpart TTT. These requirements include provisions which address the concerns raised by the commenters about counting false alarms and alarms during startup, shutdown, or malfunctions in the alarm time limit compliance calculation. Under the Primary Copper Smelting NESHAP, alarms are not included in the sum of alarm times for purposes of calculating the percentage of time the alarm on the bag leak detection system sounds if it is determined that an alarm sounds solely as the result of a malfunction of the bag leak detection system, or if the alarm sounds as result of a condition that is described in the smelter's startup, shutdown, and malfunction plan (SSMP) and the procedures in the plan described to respond to this condition are implemented.

Finally, when an alarm first sounds from the bag leak detector, we recognize that there are situations when the cause of the alarm cannot be corrected or fixed immediately or within a short period of a few hours. The correction of a torn bag or other problem which can trip the alarm may require that the baghouse be shutdown to allow facility personnel to enter the baghouse when it is safe to do so. We revised the language for the final rule to clarify that alarm time is counted as the time elapsed from when the alarm first sounds until the owner or operator acknowledges the alarm and determines the cause of the alarm. Alarm time is not the total time until the problem which tripped the alarm is corrected.

H. Is the Kennecott Utah Copper Smelter a Major or Area Source of HAP Emissions?

Comment. We received two comments challenging our conclusions that the Kennecott Utah Copper Corporation smelter located near Garfield, Utah, does not emit HAP at major source levels and is, therefore, an area source. The Utah Department of Environmental Quality (DEQ) commented that the information that we used to characterize the emissions potential of the smelter is incorrect or outdated. Data in the smelter's emission inventory report for the year 1997 indicate that the smelter did emit and has the potential to emit HAP at major source levels. The Kennecott Utah Copper Corporation (hereafter referred to as ''Kennecott''), owner and operator of the smelter, commented and acknowledged that the HAP emissions from its smelter in 1997 exceeded the major source threshold levels, but that the company planned to install new air pollution control equipment in the anode furnace and casting departments that will reduce HAP emissions, especially emissions of lead compounds, to well below major source levels.

Response. The proposed rule was developed before any HAP emissions data were available based on the fulltime operation of the Kennecott smelter. At the time, all the available evidence indicated that the smelter would not be a ''major source'' of HAP emissions because of the smelter's unique design and anticipated level of emission control.

In their comments on the proposed rule, the Utah DEQ presented HAP emissions data obtained in 1997, the first full year of operation of the new smelter. Contrary to the company's, the State's, and our expectations, total annual HAP emissions from the smelter in 1997 exceeded the major source threshold level. Specifically, lead emissions, the most prominent HAP emitted, were reported to exceed 23 tpy. This level is well above the 10 tpy single HAP threshold level for major sources and exceeds substantially the smelter's title V permitted lead emission rate of 1.3 pounds per hour, which is equivalent to about 6 tpy.

Extensive in-plant testing by Kennecott determined that the primary source of the excess lead emissions was the two anode furnaces used to refine the blister copper flowing from the flash converting furnace prior to anode

casting. At the time, the combined off-gas from both furnaces was treated in two high-energy wet scrubbers installed in series and designed to achieve both sulfur dioxide and particulate matter control. Testing of the anode furnace off-gas and the scrubber system outlet gas stream showed much higher levels of fine particulate and lead emissions than originally anticipated. Results of particle size measurements performed on the anode furnace off-gas indicated that more than half of the particulate matter was less than 1 micron in diameter with significant portions less than 0.3 microns.

During 1999 and 2000, Kennecott installed additional air pollution control equipment to better control the fine particulate and lead compounds in the anode furnace process off-gas. A quench tower, a lime injection system, and a baghouse were installed upstream of the two wet scrubbers. With the installation and startup of the new controls, the levels of fine particulate matter and HAP metal compounds emitted in the anode furnace off-gas have been significantly reduced. Based on results from a month-long test program conducted in January 2001, total annual lead emissions from the smelter were determined to be approximately 1.75 tpy, and the emissions of all metals to be approximately 2.6 tpy. These annual HAP emissions levels are well below the 10 tpy major source threshold level for a single HAP and 25 tpy major source threshold level for total HAP. Consequently, the smelter is no longer a major source of HAP emissions.

On February 15, 2001, Kennecott submitted to the Utah DEQ a notification of compliance with all title V operating permit limits and conditions including its lead limit of 1.3 pounds per hour. The requirements of the smelter's title V operating permit are federally enforceable, and both the State of Utah and the EPA have authority to take enforcement action should Kennecott fail to continue to operate the smelter in compliance with its permitted emission limits.

I. To What Extent Was the Kennecott Utah Copper Smelter Considered in the MACT Floor Determinations for New and Existing Sources?

Comment. Two commenters objected to the exclusion of the Kennecott smelter from the primary copper smelter source category definition and from consideration as part of the MACT floor determination for new and existing sources. Both commenters argued for a broader definition than that contained in the April 1998 proposal. They supported a definition similar to that used in the new source performance standard (NSPS) and Inorganic Arsenic NESHAP that would include smelters using continuous flash converters like that used at the rebuilt Kennecott smelter. Both commenters also argued for the need to include the Kennecott smelter and its continuous flash converter in the MACT floor determination for the six smelters that employ the more conventional batch converters (Pierce-Smith and Hoboken). In addition, one of the commenters suggested that Kennecott's continuous flash converter should be considered the best controlled similar source and, thus, new source MACT for the primary copper smelting source category.

Response. At the time we initiated work on the NESHAP, the primary copper smelting source category was comprised of seven smelters, all of which were engaged in the production of anode copper from copper ore concentrates by first smelting the concentrates to obtain molten copper matte in a flash smelting furnace, and then converting the molten matte to blister copper using batch converters followed by fire refining and anode casting. Consequently, every smelter that potentially could be a major HAP source used either Pierce-Smith converters (five smelters) or Hoboken converters (one smelter).

In the intervening years, Kennecott shutdown its existing smelter at Garfield, Utah, that had used batch converters. The company built a new smelter at the same location that uses a flash smelting furnace similar to that used at the other smelters, and a new continuous flash converter. The Kennecott smelter is the only domestic smelter that does not use batch converters, either Pierce-Smith or Hoboken designs, to produce blister copper.

From the perspective of raw materials processed and final product shipped, a smelter using batch-converting technology and a smelter using continuous flash-converting technology would appear to be similar, both process copper sulfide ore concentrate and produce anode copper for shipment to a electrolytic refining facility. We agree that, in general, the overall function of both of these smelters is to produce anode copper from copper ore concentrates. However, there are significant dissimilarities between how the anode copper is produced at the smelter using continuous flash converters compared with the smelters using batch converters.

The use of a continuous flash converter allows blister copper to be produced in a continuous process at the Kennecott smelter instead of a batch process as is required at the other smelters. At the Kennecott smelter, molten copper matte tapped from the continuous flash smelting furnace is first granulated by quenching with water to form solid granules of copper matte. These matte granules are then ground to a fine texture and fed to the continuous flash converter. Slag and blister copper produced are tapped from ports near the bottom of the furnace. Molten slag is transferred from the furnace to a slag hauler for subsequent disposal. Molten blister copper is transferred in heated launders directly to the anode furnace for further refining into anode copper.

Due to its unique design and operation, most of the process fugitive emission sources associated with smelters using batch converting are eliminated at the Kennecott smelter. There are no transfers of molten material in open ladles between the smelting, converting, and anode refining departments at the Kennecott smelter. In addition, there are no fugitive emissions associated with the repeated rolling-out of converters for charging, skimming, and pouring. Also, only one continuous flash converter is needed at the Kennecott smelter compared with the need for three or more batch copper converters at the other smelters.

Another difference between continuous flash converters versus batch converters is that blister copper produced by the continuous flash converter at the Kennecott smelter contains higher levels of residual sulfur and metal HAP impurities than levels seen in blister copper produced by batch converters. As a result, the anode furnace and casting departments at the Kennecott smelter use emission controls for sulfur dioxide and metal HAP emissions that are not needed at smelters using batch converters.

These differences aside, we have reconsidered whether the source category definition included in the April 1998 proposal should be broadened to include smelters using continuous flash-converting technology like the Kennecott smelter. We have concluded that the definition should be broadened and made consistent with that used to define primary copper smelters pursuant to both the primary copper smelter NSPS and Inorganic Arsenic NESHAP. We are changing the definition of primary copper smelters to mean ''any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques.''

Relative to the inclusion of the Kennecott smelter in the MACT floor determination, we disagree with the commenters that primary copper smelters using continuous flash converting should be grouped with primary copper smelters using batch converting for the existing source MACT floor determination. Section 112 of the CAA provides the Administrator the discretion to divide categories of sources into subcategories where appropriate. In establishing such subcategories for other source categories in the NESHAP program, we have considered factors such as differences in process operations (including differences between batch and continuous operation), emission characteristics, control device applicability, and opportunities for pollution prevention.

We believe that the design and operating differences between these two classes of copper converters make these sources so dissimilar with respect to HAP emission sources, level of HAP emissions, and the subsequent control measures required to control HAP emissions from these sources as to warrant the creation of two separate subcategories of primary copper smelters: primary copper smelters using batch converters, and primary copper smelters using continuous flash converters. Thus, we conclude that consideration of the Kennecott smelter in the MACT floor determinations for existing sources within the subcategory of primary copper smelters using batch converters is inappropriate since it is not among the pool of sources that comprises the subcategory.

Regarding the comment on new source MACT, we believe that there is merit to the commenter's position that for the purpose of selecting new source MACT for copper converter operations, the best controlled similar source uses flash converting. This is especially true considering our decision to change the source category definition to include all smelters engaged in the production of copper from copper sulfide ore concentrates regardless of the pyrometallurgical (smelting) techniques used. The practical effect of a decision to base new source MACT on flash converting would be a ban on the construction of a new converter department employing batch converters, which would lead to the virtual elimination of process fugitive emissions discharged from new copper converter departments. This would be best accomplished through a work practice standard that would expressly prohibit the construction of a new copper converter department employing batch copper converters. Consequently, we have selected as the final standard a work practice standard that prohibits altogether the operation of batch copper converters at new copper converter departments. We believe that the impact of this decision on the industry is none, given both the availability of newer and cleaner converting technologies, and the rigor of the new source review permitting process to which a new source would be subject.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No State or local governments own or operate primary copper smelters. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on control technology performance and not on health or safety risks.

D. 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'' 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.''

Under section 5(b) of Executive Order 13175, the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, the EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This final rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate primary copper smelters. Accordingly, the requirements of Executive Order 13175 do not apply to this action.

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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the 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 this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, the EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is 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 rule on small entities, small entity is defined as: (1) A small business that is a business having less than 1,000 employees; (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.

Based on the Small Business Administration's NAICS-based size definitions and reported employment data for the affected companies, the Agency identified no small businesses in the Primary Copper Smelting and Refining industry (NAICS code 331411). After considering the economic impacts of today's final rule on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities. All smelters potentially subject to the rule are owned by international corporations and employ more than 1,000 employees. This rule will not impose any requirements on small entities. No small businesses, small government jurisdictions, nor small organizations own or operate primary copper smelters potentially subject to the rule.

G. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1850.03), and a copy may be obtained from Sandy Farmer, Office of Environmental Information, Collection Strategies Division, U.S. Environmental Protection Agency (2137), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 260–2740.

The information collection requirements in the final rule include mandatory notifications, records, and reports required by the NESHAP general provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standard and any new or reconstructed sources subject to the standards to confirm that emission control devices are being properly operated and maintained and to ensure that the standards are being achieved. Based on the recorded and reported information, the EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B.

The annual public reporting and recordkeeping burden for this collection

of information (averaged over the first 3 years after the effective date of this rule and assuming that all six smelters with batch converters are operating and subject to the rule) is estimated to total 20,500 labor hours per year at a total annual cost of $923,800. This estimate includes initial notifications, preparation of a SSMP, preparation of a fugitive dust control plan, annual performance testing, semiannual compliance reports, and recordkeeping. Total capital costs associated with the monitoring equipment over the 3-year period of the ICR is estimated at $276,000. The total annualized cost of the monitoring equipment is estimated at $98,000. This estimate includes the capital, operating, and maintenance costs associated with the installation and operation of the monitoring equipment.

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, or business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, we have decided to use EPA Reference Methods 1, 2, 3, 4, 5, 5B, and 29 of 40 CFR part 60, appendix A.

I. Congressional Review Act

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

J. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use

This final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action 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: May 15, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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 QQQ to read as follows:

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

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Subpart QQQ—National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

What This Subpart Covers

§ 63.1440 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for primary copper smelters. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements in this subpart.

§ 63.1441 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary copper smelter that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you, and your primary copper smelter uses batch copper converters as defined in § 63.1459. Your primary copper smelter is a major source of HAP if it emits or has the potential to emit any single HAP at the rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.1442 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your primary copper smelter. The affected sources are each copper concentrate dryer, each smelting furnace, each slag cleaning vessel, each copper converter department, and the entire group of fugitive emission sources, as defined in § 63.1459.

(b) An affected source at your primary copper smelter is existing if you commenced construction or reconstruction of the affected source before April 20, 1998.

(c) An affected source at your primary copper smelter is new if you commenced construction or reconstruction of the affected source on or after April 20, 1998. An affected source is reconstructed if it meets the definition of ''reconstruction'' in § 63.2.

§ 63.1443 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than June 13, 2005.

(b) If you have a new affected source and its initial startup date is on or before June 12, 2002, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by June 12, 2002.

(c) If you have a new affected source and its initial startup date is after June 12, 2002, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your primary copper smelter is an area source that becomes a major source of HAP, the compliance dates listed in paragraphs (d)(1) and (2) of this section apply to you.

(1) Any portion of the existing primary copper smelter that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the primary copper smelter must be in compliance with this subpart no later than 3 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.1454. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations and Work Practice Standards

§ 63.1444 What emissions limitations and work practice standards must I meet for my copper concentrate dryers, smelting furnaces, slag cleaning vessels, and copper converter departments?

(a) *Copper concentrate dryers.* For each copper concentrate dryer, you must comply with the emission limitation in paragraph (a)(1) or (2) of this section that applies to you.

(1) For each existing copper concentrate dryer, you must not cause to be discharged to the atmosphere from the dryer vent any gases that contain total particulate matter in excess of 50 milligrams per dry standard cubic meter (mg/dscm) as measured using the test methods specified in § 63.1450(a).

(2) For each new copper concentrate dryer, you must not cause to be discharged to the atmosphere from the dryer vent any gases that contain total particulate matter in excess of 23 mg/dscm as measured using the test methods specified in § 63.1450(a).

(b) *Smelting furnaces.* For each smelting furnace, you must comply with the emission limitations and work practice standards in paragraphs (b)(1) and (2) of this section.

(1) For each smelting furnace, you must not cause to be discharged to the atmosphere any process off-gas that contains nonsulfuric acid particulate matter in excess of 6.2 mg/dscm as measured using the test methods specified in § 63.1450(b). Process off-gas from a smelting furnace is generated when copper ore concentrates and fluxes are being smelted to form molten copper matte and slag layers.

(2) For each smelting furnace, you must control the process fugitive emissions released when tapping copper matte or slag from the smelting furnace according to paragraphs (b)(2)(i) and (ii) of this section.

(i) At all times when copper matte or slag is tapped from the smelting furnace, you must operate a capture system that collects the gases and fumes released from the tapping port in use. The design and placement of this capture system must be such that the tapping port opening, launder, and receiving vessel (e.g., ladle, slag pot) are positioned within the confines or influence of the capture system's ventilation draft during those times when the copper matte or slag is flowing from the tapping port opening.

(ii) You must not cause to be discharged to the atmosphere from the capture system used to comply with paragraph (b)(2)(i) of this section any gases that contain total particulate matter in excess of 23 mg/dscm as measured using the test methods specified in § 63.1450(a).

(c) *Slag cleaning vessels.* For each slag cleaning vessel, you must comply with the emission limitations and work practice standards in paragraphs (c)(1) through (3) of this section that apply to you.

(1) For each slag cleaning vessel, except as provided for in paragraph (c)(2) of this section, you must not cause to be discharged to the atmosphere any process off-gas that contains nonsulfuric acid particulate matter in excess of 6.2 mg/dscm as measured using the test methods specified in § 63.1450(b).

(2) As an alternative to complying with the emission limit for nonsulfuric acid particulate matter in paragraph (c)(1) of this section, for each existing slag cleaning vessel you may choose to comply with the emission limit for total particulate matter specified in this paragraph (c)(2). You must not cause to be discharged to the atmosphere any process off-gas that contains total particulate matter in excess of 46 mg/dscm as measured using the test methods specified in § 63.1450(a).

(3) For each slag cleaning vessel, you must control process fugitive emissions released when tapping copper matte or slag from the slag cleaning vessel according to paragraphs (c)(3)(i) and (ii) of this section.

(i) At all times when copper matte or slag is tapped from the slag cleaning vessel, you must operate a capture system that collects the gases and fumes released from the tapping port in use. The design and placement of this capture system must be such that the tapping port opening, launder, and receiving vessel (e.g., ladle, slag pot) are positioned within the confines or influence of the capture system's ventilation draft during those times when the copper matte or slag is flowing from the tapping port opening.

(ii) You must not cause to be discharged to the atmosphere from the capture system used to comply with paragraph (c)(3)(i) of this section any gases that contain total particulate matter in excess of 23 mg/dscm as measured using the test methods specified in § 63.1450(a).

(d) *Existing copper converter departments.* For each existing copper converter department, you must comply with the emission limitations and work practice standards in paragraphs (d)(1) through (6) of this section that apply to you.

(1) You must operate a capture system that collects the process off gas vented from each batch copper converter. At all times when one or more batch copper converters are blowing, you must operate the capture system according to the written operation and maintenance plan that has been prepared according to the requirements in § 63.1447(b).

(2) If your copper converter department uses Pierce-Smith converters, the capture system design must include use of a primary hood that covers the entire mouth of the converter vessel when the copper converter is positioned for blowing. Additional hoods (e.g., secondary hoods) or other capture devices must be included in the capture system design as needed to achieve the opacity limit in paragraph (d)(4) of this section. The capture system design may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other, and individual duct segments may be connected to separate control devices.

(3) If your copper converter department uses Hoboken converters, the capture system must collect all process off-gas vented during blowing through the side-flue intake on each converter vessel.

(4) You must operate the capture system such that any visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department meet the opacity limit as specified in paragraphs (d)(4)(i) and (ii) of this section.

(i) The opacity of any visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department must not exceed 4 percent as determined by a performance test conducted according to § 63.1450(c).

(ii) The opacity limit in paragraph (d)(4)(i) of this section applies only at those times when a performance test is conducted according to § 63.1450(c). The requirements for compliance with opacity and visible emission standards specified in § 63.6(h) do not apply to this opacity limit.

(5) You must not cause to be discharged to the atmosphere from any Pierce-Smith converter primary hood capture system or Hoboken converter side-flue intake capture system any process off-gas that contains nonsulfuric acid particulate matter in excess of 6.2 mg/dscm as measured using the test methods specified in § 63.1450(b).

(6) You must not cause to be discharged to the atmosphere from any secondary capture system any gases that contain total particulate matter in excess of 23 mg/dscm as measured using the test methods specified in § 63.1450(a).

(e) *New copper converter departments.* For each new copper converter department for which construction commenced on or after April 20, 1998, the use of batch copper converters is prohibited.

(f) *Baghouses.* For each baghouse applied to meet any total particulate matter emission limit in paragraphs (a) through (d) of this section, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(g) *Venturi wet scrubbers.* For each venturi wet scrubber applied to meet any total particulate matter emission limit in paragraphs (a) through (d) of this section, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test.

(h) *Other control devices.* For each control device other than a baghouse or venturi wet scrubber applied to meet any total particulate matter emission limit in paragraphs (a) through (d) of this section, you must operate the control device as specified in paragraphs (h)(1) and (2) of this section.

(1) You must select one or more operating parameters, as appropriate for the control device design, that can be used as representative and reliable indicators of the control device operation.

(2) You must maintain the hourly average value for each of the selected parameters at or above the minimum level or at or below the maximum level, as appropriate for the selected parameter, established during the initial or subsequent performance test.

§ 63.1445 What work practice standards must I meet for my fugitive dust sources?

(a) You must control particulate matter emissions from fugitive dust sources at your primary copper smelter by operating according to a written fugitive dust control plan that has been approved by the designated authority. For the purpose of complying with this paragraph (a) you may use an existing fugitive dust control plan provided that the plan complies with the requirements of this section. A fugitive dust control plan is considered to be approved if the plan has been incorporated in your applicable State implementation plan, and the document addresses the fugitive dust sources specified in paragraph (b) of this section and includes the information specified in paragraph (c) of this section.

(b) Your fugitive dust control plan must address each of the fugitive dust emission sources listed in paragraphs (b)(1) through (6) of this section that are located at your primary copper smelter.

(1) On-site roadways used by trucks or other motor vehicles (e.g., front-end loaders) when transporting bulk quantities of fugitive dust materials. Paved roads and parking areas that are not used by these vehicles do not need to be included in the plan (e.g., employee and visitor parking lots).

(2) Unloading of fugitive dust materials from trucks or railcars.

(3) Outdoor piles used for storage of fugitive dust materials.

(4) Bedding areas used for blending copper concentrate and other feed constituents.

(5) Each transfer point in conveying systems used to transport fugitive dust materials. These points include, but are not limited to, transfer of material from one conveyor belt to another and transfer of material to a hopper or bin.

(6) Other site-specific sources of fugitive dust emissions that the Administrator or delegated permitting authority designate to be included in your fugitive dust control plan.

(c) Your fugitive dust control plan must describe the control measures you use to control fugitive dust emissions

from each source addressed in the plan, as applicable and appropriate for your site conditions. Examples of control measures include, but are not limited to, locating the source inside a building or other enclosure, installing and operating a local hood capture system over the source and venting the captured gas stream to a control device, placing material stockpiles below grade, installing wind screens or wind fences around the source, spraying water on the source as weather conditions require, applying appropriate dust suppression agents on the source, or combinations of these control measures.

(d) The requirement for you to operate according to a written fugitive dust control plan must be incorporated in your operating permit that is issued by the designated permitting authority under part 70 of this chapter. A copy of your fugitive dust control plan must be sent to the designated permitting authority on or before the compliance date for your primary copper smelter, as specified in § 63.1443.

§ 63.1446 What alternative emission limitation may I meet for my combined gas streams?

(a) For situations where you combine gas streams from two or more affected sources for discharge to the atmosphere through a single vent, you may choose to meet the requirements in paragraph (b) of this section as an alternative to complying with the individual total particulate matter emission limits specified in § 63.1444 that apply to you. This alternative emission limit for a combined gas stream may be used for any combination of the affected source gas steams specified in paragraphs (a)(1) through (5) of this section.

(1) Gas stream discharged from a copper concentrate dryer vent that would otherwise be subject to § 63.1444(a)(1) or (2);

(2) Gas stream discharged from a smelting furnace capture system that would otherwise be subject to § 63.1444(b)(2)(ii);

(3) Process off-gas stream discharged from a slag cleaning vessel that would otherwise be subject to § 63.1444(c)(2);

(4) Gas stream discharged from a slag cleaning vessel capture system that would otherwise be subject to § 63.1444(c)(3)(ii); and

(5) Gas stream discharged from a batch copper converter secondary capture system that would otherwise be subject to § 63.1444(d)(5).

(b) You must meet the requirements specified in paragraphs (b)(1) and (2) of this section for the combined gas stream discharged through a single vent.

(1) For each combined gas stream discharged through a single vent, you must not cause to be discharged to the atmosphere any gases that contain total particulate matter in excess of the emission limit calculated using the procedure in paragraph (b)(2) of this section and measured using the test methods specified in § 63.1450(a).

(2) You must calculate the alternative total particulate matter emission limit for your combined gas stream using Equation 1 of this section. The volumetric flow rate value for each of the individual affected source gas streams that you use for Equation 1 (i.e., the flow rate of the gas stream discharged from the affected source but before this gas stream is combined with the other gas streams) is to be the average of the volumetric flow rates measured using the test method specified in § 63.1450(a)(1)(ii):

$$E_{Alt} = \frac{E_d Q_d + E_{sv} Q_{sv} + E_{scvp} Q_{scvp} + E_{scvf} Q_{scvf} + E_{cc} Q_{cc}}{Q_d + Q_{sv} + Q_{scvp} + Q_{scvf} + Q_{cc}} \qquad \text{(Eq. 1)}$$

Where

E_{Alt} = Alternative total particulate matter emission limit for the combined gas stream discharged to atmosphere through a single vent (mg/dscm);

E_d = Total particulate matter emission limit applicable to copper concentrate dryer as specified in § 63.1444(a)(1) or (2) (mg/dscm);

Q_d = Copper concentrate dryer exhaust gas stream volumetric flow rate before being combined with other gas streams (dscm);

E_{sv} = Total particulate matter emission limit for smelting furnace capture system as specified in § 63.1444(b)(2)(ii) (mg/dscm);

Q_{sv} = Smelting furnace capture system exhaust gas stream volumetric flow rate before being combined with other gas streams (dscm);

E_{scvp} = Total particulate matter emission limit for slag cleaning vessel process off-gas as specified in § 63.1444(c)(2) (mg/dscm);

Q_{scvp} = Slag cleaning vessel process off-gas volumetric flow rate before being combined with other gas streams (dscm);

E_{scvf} = Total particulate matter emission limit for slag cleaning vessel capture system as specified in § 63.1444(c)(3)(ii) (mg/dscm);

Q_{scvf} = Slag cleaning vessel capture system exhaust gas stream volumetric flow rate before being combined with other gas streams (dscm);

E_{cc} = Total particulate emission limit for the batch copper converter secondary capture system as specified in § 63.1544(d)(5) (mg/dscm); and

Q_{cc} = Batch copper converter capture system exhaust gas stream volumetric flow rate before being combined with other gas streams (dscm).

(c) For each baghouse applied to meet any total particulate matter emission limit in paragraph (b) of this section, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(d) For each venturi wet scrubber applied to meet any total particulate matter emission limit in paragraph (b) of this section, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial or subsequent performance test.

(e) For each control device other than a baghouse or venturi wet scrubber applied to meet any total particulate matter emission limit in paragraph (b) of this section, you must operate the control device as specified in paragraphs (e)(1) and (2) of this section.

(1) You must select one or more operating parameters, as appropriate for the control device design, that can be used as representative and reliable indicators of the control device operation.

(2) You must maintain the hourly average value for each of the selected parameters at or above the minimum level or at or below the maximum level, as appropriate for the selected parameter, established during the initial or subsequent performance test.

Operation and Maintenance Requirements

§ 63.1447 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device subject to standards in § 63.1444 or § 63.1446. The plan must address the requirements in paragraphs (b)(1) through (3) of this section as applicable to the capture system or control device.

(1) *Preventative maintenance.* You must perform preventative maintenance for each capture system and control device according to written procedures specified in your operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(2) *Capture system inspections.* You must conduct monthly inspections of the equipment components of the capture system that can affect the performance of the system to collect the gases and fumes emitted from the affected source (e.g., hoods, exposed ductwork, dampers, fans) according to written procedures specified in your operation and maintenance plan. The inspection procedure must include the requirements in paragraphs (b)(2)(i) through (iii) of this section as applicable to the capture system or control device.

(i) Observations of the physical appearance of the equipment to confirm the physical integrity of the equipment (e.g., verify by visual inspection no holes in ductwork or hoods, no flow constrictions caused by dents, or accumulated dust in ductwork).

(ii) Inspection, and if necessary testing, of equipment components to confirm that the component is operating as intended (e.g., verify by appropriate measures that flow or pressure sensors, damper plates, automated damper switches and motors are operating according to manufacture or engineering design specifications).

(iii) In the event that a defective or damaged component is detected during an inspection, you must initiate corrective action according to written procedures specified in your operation and maintenance plan to correct the defect or deficiency as soon as practicable.

(3) *Copper converter department capture system operating limits.* You must establish, according to the requirements in paragraph (b)(3)(i) through (iii) of this section, operating limits for the capture system that are representative and reliable indicators of the performance of capture system when it is used to collect the process off-gas vented from batch copper converters during blowing.

(i) Select operating limit parameters appropriate for the capture system design that are representative and reliable indicators of the performance of the capture system when it is used to collect the process off-gas vented from batch copper converters during blowing. At a minimum, you must use appropriate operating limit parameters that indicate the level of the ventilation draft and the damper position settings for the capture system when operating to collect the process off-gas from the batch copper converters during blowing. Appropriate operating limit parameters for ventilation draft include, but are not limited to, volumetric flow rate through each separately ducted hood, total volumetric flow rate at the inlet to control device to which the capture system is vented, fan motor amperage, or static pressure. Any parameter for damper position setting may be used that indicates the duct damper position relative to the fully open setting.

(ii) For each operating limit parameter selected in paragraph (b)(3)(i) of this section, designate the value or setting for the parameter at which the capture system operates during batch copper converter blowing. If your blister copper production operations allow for more than one batch copper converter to be operating simultaneously in the blowing mode, designate the value or setting for the parameter at which the capture system operates during each possible batch copper converter blowing configuration that you may operate at your smelter (i.e., the operating limits with one converter blowing, with two converters blowing, with three converters blowing, as applicable to your smelter).

(iii) Include documentation in the plan to support your selection of the operating limits established for the capture system. This documentation must include a description of the capture system design, a description of the capture system operation during blister copper production, a description of each selected operating limit parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter according to the requirements in § 63.1452(a), and the data used to set the value or setting for the parameter for each of your batch copper converter configurations.

(4) *Baghouse leak detection corrective actions.* In the event a bag leak detection system alarm is triggered, you must initiate corrective action according to written procedures specified in your operation and maintenance plan to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to, the activities listed in paragraphs (b)(3)(i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repair the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

General Compliance Requirements

63.1448 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.1443, and the date upon which continuous monitoring systems have been installed and certified 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.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.1449 By what dates must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within

180 calendar days of the compliance date that is specified in § 63.1443 for your affected source to demonstrate initial compliance with each emission and opacity limit in § 63.1443 and § 63.1446 that applies to you.

(b) For each work practice standard and operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.1443.

§ 63.1450 What test methods and other procedures must I use to demonstrate initial compliance with the emission limitations?

(a) *Total particulate matter emission limits.* You must conduct each performance test to determine compliance with the total particulate matter emission limits in § 63.1444 or § 63.1446 that apply to you according to the requirements for representative test conditions specified in § 63.7(e)(1) and using the test methods and procedures in paragraphs (a)(1) through (5) of this section.

(1) Determine the concentration of total particulate matter according to the test methods in appendix A to part 60 of this chapter as specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17, as applicable, to determine the concentration of total particulate matter. You can also use ASTM D4536–96 incorporated by reference in § 63.14 as an alternative to the sampling equipment and operating procedures in Method 5 or 17 when testing a positive pressure baghouse, but you must use the sample traverse location and number of sampling points described in Method 5D.

(2) As an alternative to using the applicable method specified in paragraph (a)(1)(v) of this section, you may determine total particulate matter emissions from the control device using Method 29 in appendix A of part 60 of this chapter provided that you follow the procedures and precautions prescribed in Method 29. If the control device is a positive pressure baghouse, you must also follow the measurement procedure specified in sections 4.1 through 4.3 of Method 5D.

(3) You must conduct three separate test runs for each performance test. Each test run must have a minimum sampling time of 60 minutes and a minimum sampling volume of 0.85 dscm. For the purpose of determining compliance with the applicable total particulate matter emission limit, the arithmetic mean of the results for the three separate test runs is used.

(4) For a venturi wet scrubber applied to emissions from an affected source and subject to operating limits in § 63.1444(g) or § 63.1446(d) for pressure drop and scrubber water flow rate, you must establish site-specific operating limits according to the procedures in paragraph (a)(4)(i) and (ii) of this section.

(i) Using the continuous parameter monitoring system (CPMS) required in § 63.1452, measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

(ii) Compute and record the hourly average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(5) For a control device other than a baghouse or venturi wet scrubber applied to emissions from an affected source and subject to site-specific operating limit(s) in § 63.1444(h) or § 63.1446(e) for appropriate, site-specific operating parameters that are representative and reliable indicators of the control device performance, you must establish a site-specific operating limit(s) according to the procedures in paragraph (a)(5)(i) through (iv) of this section.

(i) Select one or more operating parameters, as appropriate for the control device design, that can be used as representative and reliable indicators of the control device operation.

(ii) Using the CPMS required in § 63.1452, measure and record the selected operating parameters for the control device during each run of the total particulate matter performance test.

(iii) Compute and record the hourly average value for each of the selected operating parameters for each individual test run. Your operating limits are the lowest value or the highest value, as appropriate for the selected operating parameter, measured in any of the three runs that meet the applicable emission limit.

(iv) You must prepare written documentation to support your selection of the operating parameters used for the control device. This documentation must include a description of each selected parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter, and the data recorded during the performance test and used to set the operating limit(s).

(b) *Nonsulfuric acid particulate matter emission limits.* You must conduct each performance test to determine compliance with the nonsulfuric acid particulate matter emission limits in § 63.1444 that apply to you according to the requirements for representative test conditions specified in § 63.7(e)(1) and using the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of nonsulfuric acid particulate matter according to the test methods in appendix A to part 60 of this chapter as specified in paragraphs (b)(1)(i) through (v) of this section.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5B to determine the nonsulfuric acid particulate matter emissions.

(2) You must conduct three separate test runs for each performance test. Each test run must have a minimum sampling time of 240 minutes and a minimum sampling volume of 3.4 dscm. For the purpose of determining compliance with the nonsulfuric acid particulate matter emission limit, the arithmetic mean of the results for the three separate test runs is used.

(c) *Copper converter department capture system opacity limit.* You must conduct each performance test to determine compliance with the opacity limit in § 63.1444 using the test methods and procedures in paragraphs (c)(1) through (9) of this section.

(1) You must conduct the performance test during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate. You may

not conduct a performance test during periods of startup, shutdown, or malfunction. Before conducting the performance test, you must prepare a written test plan specifying the copper production conditions to be maintained throughout the opacity observation period and including a copy of the written documentation you have prepared according to paragraph (a)(3) of this section to support the established operating limits for the copper converter department capture system. You must submit a copy of the test plan for review and approval by the Administrator or delegated authority. During the observation period, you must collect appropriate process information and copper converter department capture system operating information to prepare documentation sufficient to verify that all opacity observations were made during the copper production and capture system operating conditions specified in the approved test plan.

(2) You must notify the Administrator or delegated authority before conducting the opacity observations to allow the Administrator or delegated authority the opportunity to have authorized representatives attend the test. Written notification of the location and scheduled date for conducting the opacity observations must be received by the Administrator on or before 30 calendar days before this scheduled date.

(3) You must gather the data needed for determining compliance with the opacity limit using qualified visible emission observers and process monitors as described in paragraphs (c)(3)(i) and (ii) of this section.

(i) Opacity observations must be performed by a sufficient number of qualified visible emission observers to obtain two complete concurrent sets of opacity readings for the required observation period. Each visible emission observer must be certified as a qualified observer by the procedure specified in section 3 of Method 9 in appendix A of part 60 of this chapter. The entire set of readings during the required observation period does not need to be made by the same two observers. More than two observers may be used to allow for substitutions and provide for observer rest breaks. The owner or operator must obtain proof of current visible emission reading certification for each observer.

(ii) A person (or persons) familiar with the copper production operations conducted at the smelter must serve as the indoor process monitor. The indoor process monitor is stationed at a location inside the building housing the batch copper converters such that he or she can visually observe and record operations that occur in the batch copper converter aisle during the times that the visible emission observers are making opacity readings. More than one indoor process monitor may be used to allow for substitutions and provide for rest breaks.

(4) You must make all opacity observations using Method 9 in appendix A to part 60 of this chapter and following the procedures described in paragraphs (c)(4)(i) and (ii) of this section.

(i) Each visible emission observer must make his or her readings at a position from the outside of the building that houses the copper converter department such that the observer's line-of-sight is approximately perpendicular to the longer axis of the converter building, and the observer has an unobstructed view of the building roof monitor sections or roof exhaust fan outlets that are positioned over each of the batch copper converters inside the building. Opacity readings can only be made during those times when the observer's position meets the sun orientation and other conditions specified in section 2.1 of Method 9.

(ii) At 15-second intervals, each visible emission observer views the building roof monitor sections or roof exhaust fan outlets that are positioned over each of the batch copper converters inside the building and reads the opacity of the visible plumes. If no plume is visible, the observer records zero as the opacity value for the 15-second interval. In situations when it is possible for an observer to distinguish two or more visible emission plumes from the building roof monitor sections or roof exhaust fan outlets, the observer must identify, to the extent feasible, the plume having the highest opacity and record his or her opacity reading for that plume as the opacity value for the 15-second interval.

(5) You must make opacity observations for a period of sufficient duration to obtain a minimum of 120 1-minute intervals during which at least one copper converter is blowing and no interferences have occurred from other copper production events, as specified in paragraph (c)(7) of this section, which generate visible emissions inside the building that potentially can interfere with the visible emissions from the converter capture systems as seen by the outside observers. To obtain the required number of 1-minute intervals, the observation period may be divided into two or more segments performed on the same day or on different days if conditions prevent the required number of opacity readings from being obtained during one continuous time period. Examples of these conditions include, but are not limited to, changes in the sun's orientation relative to visible emission observers' positions such that the Method 9 conditions are no longer met or an unexpected thunder storm. If the total observation period is divided into two or more segments, all opacity observations must be made during the same set of copper production conditions described in your approved test plan as required by paragraph (c)(1) of this section.

(6) You must gather indoor process information during all times that the visible emission observers are making opacity readings outside the building housing the copper converter department. The indoor process monitor must continually observe the operations occurring in the copper converter department and prepare a written record of his or her observations using the procedure specified in paragraphs (c)(6)(i) through (iv) of this section.

(i) At the beginning of each observation period or segment, the clock time setting on the watch or clock to be used by the indoor process monitor must be synchronized with the clock time settings for the timepieces to be used by the outdoor opacity observers.

(ii) During each period or segment when opacity readings are being made by the visible emission observers, the indoor process monitor must continuously observe the operations occurring in the copper converter department and record his or her observations in a log book, on data sheets, or other type of permanent written format.

(iii) When a batch copper converter is blowing, a record must be prepared for the converter that includes, but is not limited to, the clock times for when blowing begins and when blowing ends and the converter blowing rate. This information may be recorded by the indoor process monitor or by a separate, automated computer data system.

(iv) The process monitor must record each event other than converter blowing that occurs in or nearby the converter aisle that he or she observes to generate visible emissions inside the building. The recorded entry for each event must include, but is not limited to, a description of the event and the clock times when the event begins and when the event ends.

(7) You must prepare a summary of the data for the entire observation period using the information recorded during the observation period by the outdoor visible emission observers and the indoor process monitor and the

procedure specified in paragraphs (c)(7)(i) through (iv) of this section.

(i) Using the field data sheets, identify the 1-minute clock times for which a total of eight opacity readings were made and recorded by both observers at 15-second intervals according to the test procedures (i.e., a total of four opacity values have been recorded for the 1-minute interval by each of the two observers). Calculate the average of the eight 15-second interval readings recorded on the field data sheets by the two observers during the clock time minute interval (add the four consecutive 15-second interval opacity readings made by Observer A during the specified clock time minute, plus the four consecutive 15-second interval opacity readings made by Observer B during the same clock time minute, and divide the resulting total by eight). Record the clock time and the opacity average for the 1-minute interval on a data summary sheet. Figure 1 of this subpart shows an example of the format for the data summary sheet you may use, but are not required to use.

(ii) Using the data summary sheets prepared according to paragraph (c)(7)(i) of this section and the process information recorded according to paragraph (c)(6)(iii) of this section, identify those 1-minute intervals for which at least one of the batch copper converters was blowing.

(iii) Using the data summary sheets prepared according to paragraph (c)(7)(ii) of this section and the process information recorded according to paragraph (c)(6)(iv) of this section, identify the 1-minute intervals during which at least one copper converter was blowing but none of the interference events listed in paragraphs (c)(7)(iii)(A) through (F) of this section occurred. Other ancillary activities not listed but conducted in or adjacent to the converter aisle during the opacity observations are not considered to be interference events (e.g., converter aisle cleaning, placement of smoking ladles or skulls on the converter aisle floor).

(A) Charging of copper matte, reverts, or other materials to a batch copper converter;

(B) Skimming slag or other molten materials from a batch copper converter;

(C) Pouring of blister copper or other molten materials from a batch copper converter;

(D) Return of slag or other molten materials to the flash smelting furnace or slag cleaning vessel;

(E) Roll-out or roll-in of the batch copper converter; or

(F) Smoke and fumes generated inside the converter building by operation of the smelting furnace, the slag cleaning vessel (if used), anode refining and casting processes that drift into the copper converter department.

(iv) Using the data summary sheets prepared according to paragraph (c)(7)(iii) of this section, up to five 1-minute intervals following an interference event may be eliminated from data used for the compliance determination calculation specified in paragraph (c)(8) of this section by applying a time delay factor. The time delay factor must be a constant number of minutes not to exceed 5 minutes that is added to the clock time recorded when cessation of the interference event occurs. The same time delay factor must be used for all interference events (i.e., a constant time delay factor for the smelter of 1 minute, 2 minutes, 3 minutes, 4 minutes, or 5 minutes). The number of minutes to be used for the time delay factor is determined based on the site-specific equipment and converter building configuration. An explanation of the rationale for selecting the value used for the time delay factor must be prepared and included in the test report.

(8) You must use the data summary prepared in paragraph (c)(7) of this section to calculate the average opacity value for a minimum of 120 1-minute intervals during which at least one copper converter was blowing with no interference events as determined according to paragraphs (c)(7)(iii) and (iv) of this section. Average opacity is calculated using Equation 1 of this section:

$$VE_{ave} = \frac{1}{n}\sum_{i=1}^{n} VE_i \qquad \text{(Eq. 1)}$$

Where

VE_{ave} = Average opacity to be used for compliance determination (percent);

n = Total number of 1-minute intervals during which at least one copper converter was blowing with no interference events as determined according to paragraphs (c)(7)(iii) and (iv) of this section (at least 120 1-minute intervals);

i = 1-minute interval ''i'' during which at least one copper converter was blowing with no interference events as determined according to paragraphs (c)(7)(iii) and (iv) of this section; and

VE_i = Average opacity value calculated for the eight opacity readings recorded during 1-minute interval ''i'' (percent).

(9) You must certify that the copper converter department capture system operated during the performance test at the operating limits established in your capture system operation and maintenance plan using the procedure specified in paragraphs (c)(9)(i) through (iv) of this section.

(i) Concurrent with all opacity observations, measure and record values for each of the operating limit parameters in your capture system operation and maintenance plan according to the monitoring requirements specified in § 63.1452(a).

(ii) For any dampers that are manually set and remain in the same position at all times the capture system is operating, the damper position must be visually checked and recorded at the beginning and end of each opacity observation period segment.

(iii) Review the recorded monitoring data. Identify and explain any times during batch copper converter blowing when the capture system operated outside the applicable operating limits.

(iv) Certify in your performance test report that during all observation period segments, the copper converter department capture system was operating at the values or settings established in your capture system operation and maintenance plan.

§ 63.1451 How do I demonstrate initial compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

(a) *Total particulate matter emission limits.* For each copper concentrate dryer, smelting furnace, slag cleaning vessel, and copper converter department subject to a total particulate matter emission limits in § 63.1444 or § 63.1446 that applies to you, you have demonstrated initial compliance if you meet both of the conditions in paragraphs (a)(1) and (2) of this section.

(1) The average concentration of total particulate matter from a control device applied to emissions from the affected source, measured according to the performance test procedures in § 63.1450(a), did not exceed the applicable emission limit.

(2) You have submitted a notification of compliance status according to the requirements in § 63.1454(e).

(b) *Nonsulfuric acid particulate matter emissions limits.* For each smelting furnace, slag cleaning vessel, and copper converter departments subject to the nonsulfuric acid particulate matter emissions limit in § 63.1444 as applies to you, you have demonstrated initial compliance if you meet both of the conditions in paragraphs (b)(1) and (2) of this section.

(1) The average concentration of nonsulfuric acid particulate matter in the process off-gas discharged from the

affected source, measured according to the performance test procedures in § 63.1450(b), did not exceed 6.2 mg/dscm.

(2) You have submitted a notification of compliance status according to the requirements in § 63.1454(e).

(c) For each existing copper converter department subject to the opacity limit in § 63.1444, you have demonstrated initial compliance if you meet both of the conditions in paragraphs (c)(1) and (2) of this section.

(1) The opacity of visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department measured according to the performance test procedures in § 63.1450(c), did not exceed 4 percent opacity.

(2) You have submitted a notification of compliance status according to the requirements in § 63.1454(e).

(d) *Copper converter department capture systems.* You have demonstrated initial compliance of the copper converter department capture system if you meet all of the conditions in paragraphs (d)(1) through (4) of this section.

(1) Prepared the capture system operation and maintenance plan according to the requirements of paragraph (a) of this section;

(2) Conducted an initial performance test according to the procedures of § 63.1450(c) demonstrating the opacity of any visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department does not exceed 4 percent opacity;

(3) Included in your notification of compliance status a copy of your written capture system operation and maintenance plan and have certified in your notification of compliance status that you will operate the copper converter department capture system at all times during blowing at the values or settings established for the operating limits in that plan; and

(4) Submitted a notification of compliance status according to the requirements in § 63.1454(e).

(e) *Baghouses.* For each baghouse subject to operating limits in § 63.1444(f) or § 63.1446(c), you have demonstrated initial compliance if you meet all of the conditions in paragraphs (e)(1) through (3) of this section.

(1) You have included in your written operation and maintenance plan required under § 63.1447(b) detailed descriptions of the procedures you use for inspection, maintenance, bag leak detection, and corrective action for the baghouse.

(2) You have certified in your notification of compliance status that you will operate the baghouse according to your written operation and maintenance plan.

(3) You have submitted the notification of compliance status according to the requirements in § 63.1454(e).

(f) *Venturi wet scrubbers.* For each venturi wet scrubber subject to operating limits in § 63.1444(g) or § 63.1446(d), you have demonstrated initial compliance if you meet all of the conditions in paragraphs (f)(1) through (3) of this section.

(1) Established site-specific operating limits for pressure drop and scrubber water flow rate and have a record of the pressure drop and scrubber water flow rate measured during the performance test you conduct to demonstrate initial compliance with paragraph (a) of this section.

(2) Certified in your notification of compliance status that you will operate the venturi wet scrubber within the established operating limits for pressure drop and scrubber water flow rate.

(3) Submitted a notification of compliance status according to the requirements in § 63.1454(e).

(g) *Other control devices.* For each control device other than a baghouse or venturi wet scrubber subject to operating limits in § 63.1444(h) or § 63.1446(e), you have demonstrated initial compliance if you meet all of the conditions in paragraphs (g)(1) through (4) of this section.

(1) Selected one or more operating parameters, as appropriate for the control device design, that can be used as representative and reliable indicators of the control device operation.

(2) Established site-specific operating limits for each of the selected operating parameters based on values measured during the performance test you conduct to demonstrate initial compliance with paragraph (a) of this section and have prepared written documentation according to the requirements in § 63.1450(a)(5)(iv).

(3) Included in your notification of compliance status a copy of the written documentation you have prepared to demonstrate compliance with paragraph (g)(2) of this section and have certified in your notification of compliance status that you will operate the control device within the established operating limits.

(4) Submitted a notification of compliance status according to the requirements in § 63.1454(e).

(h) *Fugitive dust sources.* For all fugitive dust sources subject to work practice standards in § 63.1445, you have demonstrated initial compliance if you meet all of the conditions in paragraphs (i)(1) through (3) of this section.

(1) Prepared a written fugitive dust control plan according to the requirements in § 63.1454 and it has been approved by the designated authority.

(2) Certified in your notification of compliance status that you will control emissions from the fugitive dust sources according to the procedures in the approved plan.

(3) Submitted the notification of compliance status according to the requirements in § 63.1454(e).

(i) *Operation and maintenance requirements.* You have demonstrated initial compliance with the operation and maintenance requirements that apply to you if you meet all of the conditions in paragraphs (i)(1) through (3) of this section.

(1) Prepared an operation and maintenance plan according to the requirements in § 63.1454(b).

(2) Certified in your notification of compliance status that you will operate each capture system and control device according to the procedures in the plan.

(3) Submitted the notification of compliance status according to the requirements in § 63.1454(e).

Continuous Compliance Requirements

§ 63.1452 What are my monitoring requirements?

(a) *Copper converter department capture systems.* For each operating limit established under your capture system operation and maintenance plan, you must install, operate, and maintain an appropriate monitoring device according the requirements in paragraphs (a)(1) though (6) of this section to measure and record the operating limit value or setting at all times the copper converter department capture system is operating during batch copper converter blowing. Dampers that are manually set and remain in the same position at all times the capture system is operating are exempted from the requirements of this paragraph (a).

(1) Install the monitoring device, associated sensor(s), and recording equipment according to the manufacturers' specifications. Locate the sensor(s) used for monitoring in or as close to a position that provides a representative measurement of the parameter being monitored.

(2) If a flow measurement device is used to monitor the operating limit parameter, you must meet the requirements in paragraph (a)(2)(i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment such as

straightening vanes in a position that provides a representative flow.

(ii) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semiannually.

(3) If a pressure measurement device is used to monitor the operating limit parameter, you must meet the requirements in paragraph (a)(3)(i) through (v) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check pressure tap pluggage daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(4) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specifications or you install a new sensor.

(5) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(6) Record the results of each inspection, calibration, and validation check.

(b) *Baghouses.* For each baghouse subject to the operating limit in § 63.1444(f) or § 63.1446(c) for the bag leak detection system alarm, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in paragraph (b)(1) of this section and conduct regular inspections according to the requirements in paragraph (b)(2) of this section.

(1) You must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (b)(1)(i) through (vii) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(ii) The system must provide output of relative changes in particulate matter loadings.

(iii) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, ''Fabric Filter Bag Leak Detection Guidance,'' EPA–454/R–98–015, September 1997. You may obtain a copy of this guidance document by contacting the National Technical Information Service (NTIS) at 800–553–6847. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(v) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(vi) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must conduct baghouse inspections at their specified frequencies according to the requirements in paragraphs (b)(2)(i) through (viii) of this section.

(i) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(ii) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(iii) Check the compressed air supply for pulse-jet baghouses each day.

(iv) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(v) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(vi) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(vii) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(viii) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(c) *Venturi wet scrubbers.* For each venturi wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.1444(g) or § 63.1446(d), you must at all times monitor the hourly average pressure drop and water flow rate using a CPMS. You must install, operate, and maintain each CPMS according to the requirements in paragraphs (c)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must meet the requirements in paragraphs (c)(1)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must meet the requirements in paragraphs (c)(2)(i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) *Other control devices.* For each control device other than a baghouse or venturi wet scrubber subject to the operating limits for appropriate parameters in § 63.1444(h) or § 63.1446(e), you must at all times monitor the hourly average pressure drop and water flow rate using a CPMS. You must install, operate, and maintain each CPMS according to the equipment manufacturer's specifications and the requirements in paragraphs (d)(1) though (5) of this section.

(1) Locate the sensor(s) used for monitoring in or as close to a position that provides a representative measurement of the parameter being monitored.

(2) Determine the hourly average of all recorded readings.

(3) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specifications or you install a new sensor.

(4) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(5) Record the results of each inspection, calibration, and validation check.

(e) Except for monitoring 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 an affected source is operating.

(f) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(g) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitor to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.1453 How do I demonstrate continuous compliance with the emission limitations, work practice standards, and operation and maintenance requirements that apply to me?

(a) *Particulate matter emission limits.* For each affected source subject to a particulate matter emission limit § 63.1444 or § 63.1446 as applies to you, you must demonstrate continuous compliance according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) For each copper concentrate dryer, smelting furnace, slag cleaning vessel, and copper converter department subject to a total particulate matter emission limit in § 63.1444 or § 63.1446 as applies to you, you must demonstrate continuous compliance by meeting the conditions in paragraphs (a)(1)(i) and (ii) of this section.

(i) Maintain the average concentration of total particulate matter in the gases discharged from the affected source at or below the applicable emission limit.

(ii) Conduct subsequent performance tests following your initial performance test no less frequently than once per year according to the performance test procedures in § 63.1450(a).

(2) For each smelting furnace, slag cleaning vessel, and copper converter department subject to the nonsulfuric acid particulate matter emission limit in § 63.1444 as applies to you, you must demonstrate continuous compliance by meeting the conditions in paragraphs (a)(2)(i) and (ii) of this section.

(i) Maintain the average concentration of nonsulfuric acid particulate matter in the process off-gas discharged from the affected source at or below 6.2 mg/dscm.

(ii) Conduct subsequent performance tests following your initial performance test no less frequently than once per year according to the performance test procedures in § 63.1450(b).

(b) *Copper converter department capture systems.* You must demonstrate continuous compliance of the copper converter department capture system by meeting the requirements in paragraphs (b)(1) through (4) of this section.

(1) Operate the copper converter department capture system at all times during blowing at or above the lowest values or settings established for the operating limits and demonstrated to achieve the opacity limit according to the applicable requirements of this subpart;

(2) Inspect and maintain the copper converter department capture system according to the applicable requirements in § 63.1447 and recording all information needed to document conformance with these requirements;

(3) Monitor the copper converter department capture system according to the requirements in § 63.1452(a) and collecting, reducing, and recording the monitoring data for each of the operating limit parameters according to the applicable requirements of this subpart; and

(4) Conduct subsequent performance tests according to the requirements of § 63.1450(c) following your initial performance test no less frequently than once per year to demonstrate that the opacity of any visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department does not exceed 4 percent opacity.

(c) *Baghouses.* For each baghouse subject to the operating limit for the bag leak detection system alarm in § 63.1444(f) or § 63.1446(c), you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(1) through (3) of this section.

(1) Maintain the baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. To determine the percent of time the alarm sounded use the procedures in paragraphs (c)(1)(i) through (v) of this section.

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan, and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintain records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspect and maintain each baghouse according to the requirements in § 63.1451(b)(2) and recording all information needed to document conformance with these requirements. If

you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.1451(b)(1)(vi), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(d) *Venturi wet scrubbers.* For each venturi wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.1444(g) or § 63.1446(d), you must demonstrate continuous compliance by meeting the requirements of paragraphs (d)(1) through (3) of this section.

(1) Maintain the hourly average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspect and maintain each venturi wet scrubber CPMS according to § 63.1452(c) and recording all information needed to document conformance with these requirements; and

(3) Collect and reduce monitoring data for pressure drop and scrubber water flow rate according to § 63.1452(e) and recording all information needed to document conformance with these requirements.

(e) *Other control devices.* For each control device other than a baghouse or venturi wet scrubber subject to the operating limits for site-specific operating parameters in § 63.1444(h) or § 63.1446(e), you must demonstrate continuous compliance by meeting the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintain the hourly average rate at levels no lower than those established during the initial or subsequent performance test;

(2) Inspect and maintain each venturi wet scrubber CPMS according to § 63.1452(d) and recording all information needed to document conformance with these requirements; and

(3) Collect and reduce monitoring data for selected parameters according to § 63.1452(e) and recording all information needed to document conformance with these requirements.

(f) *Fugitive dust sources.* For each fugitive dust source subject to work practice standards in § 63.1445, you must demonstrate continuous compliance by implementing all of fugitive control measures specified for the source in your written fugitive dust control plan.

Notifications, Reports and Records

§ 63.1454 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (h)(5), 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you start your affected source before June 12, 2002, you must submit your initial notification not later than October 10, 2002.

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after June 12, 2002, you must submit your 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, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii) by the date specified in paragraph (e)(1) or (2) of this section as applies to you.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that includes a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.1455 What reports must I submit and when?

(a) You must submit each report in paragraphs (a)(1) and (2) of this section that applies to you.

(1) You must submit a compliance report semiannually according to the requirements in paragraph (b) of this section and containing the information in paragraph (c) of this section.

(2) You must submit an 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. You must report the actions taken for the event by fax or telephone within 2 working days after starting actions inconsistent with the plan. You must submit the information in § 63.10(d)(5)(ii) of this part by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

(b) Unless the Administrator has approved a different schedule under § 63.10(a), you must submit each compliance report required in paragraph (a) of this section according to the applicable requirements in 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 § 63.1443 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.1443.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(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 comes first after 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) of this chapter, 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) Each compliance report must contain the information in paragraphs (c)(1) through (3) of this section and, as applicable, paragraphs (c)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, as defined in 40 CFR 63.2, with that official's name, title, and signature, certifying the accuracy and completeness 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) If there are no deviations from any emission limitations (emission limit, operating limit, opacity limit) that applies to you and there are no deviations from the requirements for work practice standards in this subpart, a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which an operating parameter monitoring system was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the monitoring system was out-of-control during the reporting period.

(7) For each deviation from an emission limitation (emission limit, operating limit, opacity limit) and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a continuous monitoring system to comply with the emission limitations or work practice standards in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation (emission limit, operating limit, opacity limit, and visible emission limit) occurring at an affected source where you are using a operating parameter monitoring system to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (c)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time and duration that each monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) 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.

(v) 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.

(vi) 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.

(vii) A summary of the total duration of monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during that reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the monitoring system.

(x) The date of the latest monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(d) If you have obtained a Title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 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 you submit a compliance report pursuant to paragraph (a) of this section 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 requirement in this subpart, submission of the compliance report is deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

§ 63.1456 What records must I keep and how long must I keep my records?

(a) You must keep the records listed in paragraphs (a)(1) through (7) 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) For each monitoring system, you must keep the records specified in paragraphs (a)(4)(i) through (iv) of this section.

(i) Records described in § 63.10(b)(2)(vi) through (xi).

(ii) Monitoring data recorded by the monitoring system during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(iii) Previous (i.e., superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(iv) 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.

(5) For each performance test you conduct to demonstrate compliance with a opacity limit according to § 63.1450(c), you must keep the records specified in paragraphs (a)(5)(i) through (ix) of this section.

(i) Dates and time intervals of all opacity observation period segments;

(ii) Description of overall smelter operating conditions during each observation period. Identify, if any, the smelter copper production process equipment that was out-of-service during the performance test and explain why this equipment was not in operation;

(iii) Name, affiliation, and copy of current visible emission reading certification for each visible emission observer participating in the performance test;

(iv) Name, title, and affiliation for each indoor process monitor participating in the performance test;

(v) Copies of all visible emission observer opacity field data sheets;

(vi) Copies of all indoor process monitor operating log sheets;

(vii) Copies of all data summary sheets used for data reduction;

(viii) Copy of calculation sheets of the average opacity value used to demonstrate compliance with the opacity limit; and

(ix) Documentation according to the requirements in § 63.1450(c)(9)(iv) to support your selection of the site-

specific capture system operating limits used for each batch copper converter capture system when blowing.

(6) For each baghouse subject to the operating limit in § 63.1444(f) or § 63.1446(c), you must keep the records specified in paragraphs (a)(6)(i) and (ii) of this section.

(i) Records of alarms for each bag leak detection system.

(ii) Description of the corrective actions taken following each bag leak detection alarm.

(7) For each control device other than a baghouse or venturi wet scrubber subject to site-specific operating limits in § 63.1444(g) or § 63.1446(f), you must keep documentation according to the requirements in § 63.1450(a)(5)(iv) to support your selection of the site-specific operating limits for the control device.

(b) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(c) 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.

(d) 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 off site for the remaining 3 years.

Other Requirements and Information

§ 63.1457 What part of the general provisions apply to me?

Table 2 to this subpart shows which parts of the general provisions in §§ 63.1 through 63.15 apply to you.

§ 63.1458 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. 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 U.S. 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 40 CFR part 63, subpart E, the authorities listed in paragraph (c) of this section are retained by the U.S. EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the emission limitations and work practice standards in §§ 63.1444 through 63.1446 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(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.

§ 63.1459 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to continuously monitor relative particulate matter loadings.

Baghouse means a control device that collects particulate matter by filtering the gas stream through bags. A baghouse is also referred to as a ''fabric filter.''

Batch copper converter means a Pierce-Smith converter or Hoboken converter in which copper matte is oxidized to form blister copper by a process that is performed in discrete batches using a sequence of charging, blowing, skimming, and pouring.

Blowing means the operating mode for a batch copper converter during which air or oxygen-enriched air is injected into the molten converter bath.

Capture system means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Charging means the operating mode for a batch copper converter during which molten or solid material is added into the vessel.

Control device means the air pollution control equipment used to collect particulate matter emissions. Examples of such equipment include, but are not limited to, a baghouse, an electrostatic precipitator, and a wet scrubber.

Copper concentrate dryer means a vessel in which copper concentrates are heated in the presence of air to reduce the moisture content of the material. Supplemental copper-bearing feed materials and fluxes may be added or mixed with the copper concentrates fed to a copper concentrate dryer.

Copper converter department means the area at a primary copper smelter in which the copper converters are located.

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Deviation means any instance in which an affected source subject to this subpart or an owner or operator of such a source fails to meet any of the following:

(1) 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) 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) Any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, operating limit, or visible emission limit.

Fugitive dust material means copper concentrate, dross, reverts, slag, speiss, or other solid copper-bearing materials.

Fugitive dust source means a stationary source of particulate matter emissions resulting from the handling, storage, transfer, or other management of fugitive dust materials where the source is not associated with a specific process, process vent, or stack. Examples of a fugitive dust source include, but are not limited to, on-site roadways used by trucks transporting copper concentrate, unloading of materials from trucks or railcars, outdoor material storage piles, and transfer of material to hoppers and bins.

Holding means the operating mode for a batch copper converter during which the molten bath is maintained in the vessel but no blowing is performed nor is material added into or removed from the vessel.

Opacity means the degree to which emissions reduce the transmission of light.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the specific reference method.

Pouring means the operating mode for a batch copper converter during which molten copper is removed from the vessel.

Primary copper smelter means any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques.

Responsible official means responsible official as defined in 40 CFR 70.2.

Skimming means the batch copper converter operating mode during which molten slag is removed from the vessel.

Slag cleaning vessel means a vessel that receives molten copper-bearing material and the predominant use of the vessel is to separate this material into molten copper matte and slag layers.

Smelting furnace means a furnace, reactor, or other type of vessel in which copper ore concentrate and fluxes are melted to form a molten mass of material containing copper matte and slag. Other copper-bearing materials may also be charged to the smelting furnace.

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.

As required in § 63.1457, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 1 TO SUBPART QQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQ

Citation	Subject	Applies to subpart QQQ	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction and Reconstruction	Yes.	
§ 63.6(a)-(g)	Compliance with Standards and Maintenance requirements.	Yes.	
§ 63.6(h)	Determining compliance with Opacity and VE standards.	No	Subpart QQQ specifies the requirements and test protocol used to determine compliance with the opacity limits.
§ 63.6(i)-(j)	Extension of Compliance and Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)-(2)	Applicability and Performance Test Dates.	No	Subpart QQQ specifies performance test applicability and dates.
§ 63.7(a)(3), (b)-(h)	Performance Testing Requirements	Yes.	
§ 63.8 except for (a)(4),(c)(4), and (f)(6).	Monitoring Requirements	Yes.	
§ 63.8(a)(4)	Additional Monitoring Requirements for Control devices in § 63.11.	No	Subpart QQ does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart QQQ specifies requirements for operation of CMS.
§ 63.8(f)(6)	RATA Alternative	No	Subpart QQQ does not require continuous emission monitoring systems.
§ 63.9	Notification Requirements	Yes.	
§ 63.9(g)(5)	DATA reduction	No	Subpart QQQ specifies data reduction requirements
§ 63.10 except for (b)(2)(xiii) and (c)(7)-(8).	Recordkeeping and reporting Requirements.	Yes.	
§ 63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart QQQ does not require continuous emission monitoring systems.
§ 63.10(c)(7)-(8)	Records of Excess Emissions and Parameter Monitoring Accedences for CMS.	No	Subpart QQQ specifies record keeping requirements
§ 63.11	Control Device Requirements	No	Subpart QQQ does not require flares
§ 63.12	State Authority and Delegations	Yes.	
§§ 63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

FIGURE 1 TO SUBPART QQQ OF PART 63.—DATA SUMMARY SHEET FOR DETERMINATION OF AVERAGE OPACITY

Clock time	Number of converters blowing	Converter aisle activity	Average opacity for 1-minute interval (percent)	Visible emissions interference observed during 1-minute interval? (yes or no)	Average opacity for 1-minute interval blowing without visible emission interferences (percent)

FIGURE 1 TO SUBPART QQQ OF PART 63.—DATA SUMMARY SHEET FOR DETERMINATION OF AVERAGE OPACITY—Continued

Clock time	Number of converters blowing	Converter aisle activity	Average opacity for 1-minute interval (percent)	Visible emissions interference observed during 1-minute interval? (yes or no)	Average opacity for 1-minute interval blowing without visible emission interferences (percent)

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Part IV

Environmental Protection Agency

40 CFR Part 260 et al.

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes and Mercury-Containing Equipment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 268, 270, and 273

[FRL–7217–7]

RIN 2050–AE52

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes and Mercury-Containing Equipment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Many used cathode ray tubes (CRTs) and items of mercury-containing equipment are currently classified as characteristic hazardous wastes under the Resource Conservation and Recovery Act (RCRA). They are therefore subject to the hazardous waste regulations of RCRA Subtitle C unless they come from a household or a conditionally exempt small quantity generator. Today, the Environmental Protection Agency (EPA) proposes and seeks comment on an exclusion from the definition of solid waste which would streamline RCRA management requirements for used cathode ray tubes (CRTs) and glass removed from CRTs sent for recycling. In today's notice, the Agency also clarifies the status of used CRTs sent for reuse. In addition, EPA proposes and seeks comment on streamlining management requirements for used mercury-containing equipment by adding it to the federal list of universal wastes.

DATES: To make sure EPA considers your comments or suggested revisions to this proposal, they must be postmarked on or before August 12, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2002–CRTP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address listed in the **SUPPLEMENTARY INFORMATION** section below. Comments may also be submitted electronically to *rcra-docket@epamail.epa.gov.* See the beginning of the **SUPPLEMENTARY INFORMATION** section for instructions on electronic submissions.

Public comments and supporting materials are available for viewing in the RCRA Docket and Information Center (RIC) located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from the regulatory docket at no charge. Additional copies cost $0.15/page. The index is available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing it.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund/EPCRA/UST Call Center at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ms. Marilyn Goode, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703) 308–8800, electronic mail: *goode.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Comment Submission

You may submit comments electronically through the Internet to: rcra-docket@epa.gov. You should identify comments in electronic format with the docket number F–2002–CRTP–FFFFF. All electronic comments must be submitted as an ASCII (text) file avoiding the use of special characters and any form of encryption. If possible, EPA's Office of Solid Waste (OSW) would also like to receive an additional copy of the comments on disk in WordPerfect 6.1 file format. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460. If possible, please provide two non-CBI summaries of any CBI information. Some of the supporting documents in the docket also are available in electronic format on the Internet at URL: *http://www.epa.gov/epaoswer/hazwaste/recycle/electron/crt.htm.*

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing. The official administrative file is the paper file maintained at the RCRA Docket, the address of which is in **ADDRESSES** at the beginning of this document.

EPA's responses to public comments, whether the comments are received in written or electronic format, will be published in the **Federal Register** or in a response to comments document placed in the public docket. We will not reply immediately to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and the supporting materials for the issues and memoranda discussed below in the RCRA Information Center (RIC) located at Crystal Gateway 1, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review file materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15 per page.

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I. Legal Authority

These regulations are proposed under the authority of sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, and 6926.

II. List of Abbreviations and Acronyms

CES Computers and Electronics Subcommittee
CFR Code of Federal Regulations
CRT Cathode Ray Tube
CSI Common Sense Initiative
DOT Department of Transportation
FPD Flat Panel Display
HDTV High Definition Television
LCD Liquid Crystal Display
LDR
LQHUW Large Quantity Handler of Universal Waste
OECD Organization for Economic Cooperation and Development
OSHA Occupational Safety and Health Administration
RCRA Resource Conservation and Recovery Act
SQHUW Small Quantity Handler of Universal Waste
TC Toxicity Characteristic
TCLP Toxicity Characteristic Leaching Procedure
TSDF Treatment, Storage and Disposal Facility
TV Television
USWAG Utility Solid Waste Activities Group
UWR Universal Waste Rule
WTE Waste-to-Energy

III. Cathode Ray Tubes

A. What Is The Purpose of EPA's Proposal?

Technological advances in information management and communication have improved the quality of people's lives in countless ways. However, our growing use of electronic products at home and in the workplace has given us a new environmental challenge: Electronics waste. Today's proposed rule is an important step towards meeting the challenge of managing electronics waste in a way that is environmentally sound while at the same time encouraging the reuse and recycling of these materials.

EPA estimates that about 57 million televisions and computers are sold annually to households and businesses in the United States. These purchasers often do not discard older models when buying newer versions of the same products. Consumers (both business and household) frequently store their retired products. Experts agree that the average household may have between two and three units in storage. The numbers of units (mainly computers) stored by businesses are of course much greater. In total, approximately 20 to 24 million computers and televisions are added to storage each year. Over the next decade, storage is expected to increase at a faster rate because of advances in digital technology for televisions. Just as advances in computer speed and software have made older computers uneconomical to repair, newer digital broadcast standards are likely to reduce the repair and resale value of older televisions.

Recycling glass from computers and televisions is still largely a new industry. However, the number of units available for reuse or recycling is growing rapidly, and state and industry initiatives to promote recycling are increasing. EPA is eager to see this industry grow, in part because reusing and recycling these materials saves valuable natural resources and avoids their disposal in landfills and incinerators. The Agency must, of course, assure that materials under RCRA jurisdiction are managed in a way that protects human health and the environment.

Today, the Agency seeks comment on streamlining management requirements for used CRTs and processed CRT glass by proposing a conditional exclusion from the definition of solid waste for these materials when they are recycled (see proposed 40 CFR 261.4(a)(23) and 261.4(b)(39)). The purpose of these proposed simplified requirements is to encourage greater reuse, recycling, and better management of this growing wastestream, while maintaining necessary environmental protection. We are also soliciting comment on certain conditions intended to ensure that the materials are handled as commodities rather than wastes.

B. What Are Cathode Ray Tubes?

Cathode ray tubes (CRTs) are vacuum tubes, made primarily of glass, which constitute the video display components of televisions and computer monitors. CRT sizes are typically measured from one corner; the diagonal of a CRT display generally ranges from 1 to 38 inches. Other types of CRTs include medical, automotive, oscilloscope, and appliance CRTs, which are typically 12 inches diagonal or smaller, while military and aircraft control tower CRTs may be much larger.

CRTs are built of a specialized glass that often contains lead. They consist of four major parts: A glass panel (faceplate); a shadow mask; a glass funnel; and a glass neck which houses the electron gun. The glass panel is the front of the CRT that the viewer sees when looking at a TV or computer screen. The shadow mask is a thin metal sheet with holes that is located immediately behind the glass panel. Attached to the back of the glass panel is the glass funnel. The panel and funnel are joined with the shadow mask and sealed together with a low-temperature glass frit, consisting of solder glass containing organic binders. The back end of the CRT is the glass neck that holds the electron gun. This gun produces the electrons that strike the glass panel, resulting in viewable images on the display surface. A CRT is assembled into a monitor, a unit that includes several other parts, including a plastic cabinet, electromagnetic shields, circuit boards, connectors, and cabling.

C. Why Are Cathode Ray Tubes an Environmental Concern?

Under Subtitle C of RCRA, a solid waste is a hazardous waste if it exhibits one or more of the characteristics of ignitability, corrosivity, reactivity, or toxicity in 40 CFR part 261, subpart C, or if it is a listed hazardous waste in part 261, subpart D. The RCRA regulations set forth requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs). EPA regulations also contain exclusions for certain wastes from the definition of solid waste or hazardous waste (40 CFR 261.4)(a) and (b)). In addition, EPA has developed streamlined rules for particular wastes, including recyclable wastes (40 CFR part 266) and universal wastes such as batteries, pesticides, thermostats, and lamps that are widely generated by different industries (40 CFR part 273).

Manufacturers generally use significant quantities of lead to make color cathode ray tubes. Televisions and color computer monitors contain an average of four pounds of lead (the exact amount depends on size and make). Lead is present in the panel glass, funnel, neck, and glass frit of color CRTs, with the highest concentrations usually found in the frit and funnel glass. The amount of lead used in some manufacturing processes of CRTs appears to be decreasing. However, according to a study of CRTs published by the University of Florida, the average concentration of lead in leachate from

colored CRT glass generated through EPA's toxicity characteristic leaching procedure (TCLP) was 22.2 milligrams per liter (mg/l). This level is considerably above the toxicity characteristic regulatory level of 5 milligrams per liter that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)). For monochrome CRTs, the average lead leachate concentration was 0.03 mg/l. These data appear to indicate that black and white monitors do not generally fail the TC. The faceplate also does not usually fail the TC.

Other hazardous constituents sometimes present in CRT glass are mercury, cadmium, and arsenic. However, these constituents are found in very low concentrations that are unlikely to exceed the TC concentration limits (*see Characterization of Lead Leachability from Cathode Ray Tubes Using the Toxicity Characteristic Leaching Procedure,* T.G. Townsend *et al.,* University of Florida, 1999). Flat panel displays (FPDs) have emerged on the electronics market as a replacement for CRTs in certain applications, primarily because FPDs are lighter, smaller, and more portable, and they consume less energy during operation. FPDs generally contain no lead, but may contain encapsulated mercury in small amounts.

D. How Are Used Cathode Ray Tubes Currently Managed?

1. Reuse

Many used computers are resold or donated so that they can be used again, either as is or after minor repairs. Although the Agency has no legal jurisdiction over reused computers, we encourage this option as a responsible way to manage these materials, because preventing or delaying the generation of waste often conserves resources. This option extends the lives of valuable products and keeps them out of the waste management system for a longer time. Reuse also allows schools, non-profit organizations, and individual families to use equipment that they otherwise could not afford. Many markets for reuse of computers are located abroad, particularly in countries where few may be able to purchase state-of-the-art new equipment.

Organizations which handle used computers vary from area to area. In some cases, nonprofit organizations such as charities and school districts take donations of used computer equipment. These organizations may test the equipment, and, if necessary, rewire it and replace various parts, including the electron gun, before sending them for reuse. In other cases, the entities that collect the CRTs send them to another organization with more expertise for evaluation and possible repair and reuse. CRTs that cannot be used after such minor repairs may be sent to recycling or disposal. CRTs from televisions are more likely to be repaired by appliance dealers or small repair shops before reuse.

2. Recycling

a. Collection of used CRTs. If reuse or repair is not a practical option, CRTs can be sent for recycling, which typically consists of disassembly for the purpose of recovering valuable materials from the CRTs, especially glass. A growing number of municipalities are offering to collect computers and electronics for recycling. In addition, public and private organizations have emerged that accept CRTs for the same purpose. Examples of such organizations include county recycling drop-off centers, television repair shops, charities, electronics recycling companies, and electronics manufacturers and retailers.

An increasing number of electronics manufacturers are offering to take back computer CRTs for recycling. In some cases, these services are provided free. In other cases, a fee is charged, usually for shipping and handling. Take-back programs have been available for some time to major corporations and large purchasers of electronic equipment. Now, electronics manufacturers are beginning to offer similar services for computer CRTs to small businesses and households.

b. Recycling of unused CRTs and unused CRT glass. Makers of glass for CRTs recycle some of the glass they produce because it does not meet product specifications. EPA estimates that about one or two percent of glass production results in unused, off-specification products. This glass is generally recycled into new CRT glass. The glass may be recycled on-site at a CRT glass manufacturing facility, or it may be sent to a glass processor. Computers and television manufacturers also find that a small percentage of assembled monitors are ''off-specification''. They may send these unused devices to a glass processor.

c. Glass processing and other materials recovery. CRT glass processors that accept used CRTs generally receive them from three sources: the glass manufacturers described above (who supply most of the glass), manufacturers of monitor units who decide not to sell off-specification monitors, and businesses who provide used computers or televisions, which at present are a much smaller source.

The used CRTs are typically stored in a warehouse. When the processing begins, the CRT display unit is dismantled, and the bare CRT is separated from all other parts (usually glass, plastic, or metal). Next, the vacuum is released by drilling through the anode, a small metal button in the funnel. The different glass portions of the CRT (faceplate, funnel, and neck) are then separated and classified according to chemical composition, especially by the amount of lead contained. The same sorting takes place for broken glass received from CRT glass manufacturers, which is separated into leaded and non-leaded glass. All glass is then cleaned and the coatings removed. The sorted and cleaned cullet (*i.e.,* processed glass) is then typically stored in enclosed areas before it is shipped off-site to a CRT glass manufacturer (or sometimes to a smelter or to manufacturers of other kinds of glass). When a CRT glass manufacturing facility receives a shipment of processed CRT glass, it removes the anode button and further crushes the glass, which then enters a furnace to be heated and made into new CRT glass.

Sometimes the processed glass is sent to a lead smelter where it is recycled to reclaim the lead and to provide silica, which acts as a fluxing agent in the smelter. These uses often occur if the glass does not meet the specifications for CRT glass. The cleaning process described above also generates glass fines that are collected and sold to lead smelters to be used as a fluxing agent. In addition, processed CRT glass may be sent to copper smelters, also for use as a flux. Sometimes other types of production facilities use processed CRT glass to make objects such as radiation shielding, acoustical barriers, optical glass beads, or decorative glass and tile products. The market for these recycled glass items is currently limited, but may grow in the future.

3. Disposal

Many consumers do not wish to discard monitors and TVs if they can be recycled. Many or most CRTs therefore remain in storage. Of the CRTs that are disposed of by households, most go to municipal landfills, and others to municipal waste-to-energy (WTE) facilities. Only a small percentage are recycled (*see Life Cycle Assessment of the Disposal of Household Electronics,* D. McKenna *et al.,* August 1996, which indicated that only one percent of CRTs from households were recycled). Some CRTs from non-household sources are also placed in municipal landfills. Some

states (such as Massachusetts and California) have banned CRTs from all sources from landfills.

E. How Do EPA's Current Regulations Apply to CRTs and Other Electronic Materials?

As described above, CRT glass often exhibits the toxicity characteristic (TC) for lead because this constituent is used to make most CRT glass. Whether a person or facility is currently subject to the RCRA hazardous waste regulations depends on several factors, including whether the CRT will be recycled or disposed and the type of user. Following is a brief description of how different entities are currently regulated.

1. Who Is Regulated And Who Is Not?

a. Households. Households that dispose of CRTs are exempt from hazardous waste management requirements under 40 CFR 261.4(b)(1). They may therefore send their used computer and television monitors to any facility or collector for recycling or disposal without being subject to regulation. Other facilities managing household hazardous waste (such as collectors, recyclers, or disposers) continue to be exempt from hazardous waste requirements unless the household waste is mixed with other regulated hazardous waste.

b. Non-residential generators. Non-residential generators of less than 100 kilograms (about 220 lbs) of hazardous waste (including CRTs) in a calendar month are known as conditionally exempt small quantity generators (CESQGs) and are not subject to most RCRA Subtitle C hazardous waste management standards. The Agency notes that about 7 or 8 CRTs would be sufficient to weigh 220 lbs (assuming that each monitor weighed 30 lbs). These CESQGs may choose to send their wastes to a municipal solid waste landfill or other facility approved by the state for the management of industrial or municipal non-hazardous wastes, including recycling facilities (40 CFR 261.5). Generators of more than 100 kilograms (about 220 lbs) and less than 1,000 kilograms (about 2,200 lbs) of hazardous waste (including CRTs) in a calendar month are subject to the RCRA hazardous waste management standards, but are allowed to comply with certain reduced regulatory requirements (40 CFR 262.34). Generators of more than 1,000 kilograms (about 2,200 lbs) of hazardous waste in a calendar month are considered large quantity generators and are subject to all the applicable hazardous waste regulations for generators (40 CFR 262.34). CRTs that are not considered wastes should not be counted in determining whether a generator is a CESQG, SQG, or LQG.

2. When Do CRTs Become Wastes?

To determine whether a non-residential facility with used CRTs must comply with the RCRA hazardous waste regulations, the user must first determine if its used CRTs are solid wastes. Following is a brief description of how solid waste determinations for CRTs are made under federal law.

a. Reuse and repair of used CRTs. EPA has consistently taken the view that materials used and taken out of service by one person are not wastes if a second person puts them to the same type of use without first ''reclaiming'' them (*see* 50 FR 624, January 5, 1985). Many CRTs are taken out of service by both businesses and households not because they can no longer be used, but because users are upgrading their systems to take advantage of the rapid advances that have resulted in better and faster electronics. Businesses and organizations upgrading their computers often replace the entire computer system, including the monitors. A working CRT-containing unit considered obsolete by one user is therefore likely to be capable of reuse as a computer monitor or a television monitor by another user.

Many businesses and organizations that take CRTs out of service do not have the specialized knowledge needed to determine whether the unit can be reused as a computer or television display unit. Moreover, those entities often do not decide whether a particular CRT will, in fact, be reused. Many businesses and other organizations send used computers and televisions to resellers. Resellers often test CRTs or otherwise decide if the CRTs can be reused directly, if they can be reused after minor repairs, or if they must be sent for further processing or disposal. Because the typical original user usually lacks the specialized knowledge needed to decide the future of a CRT, EPA is today clarifying that we do not consider a user sending a CRT to a reseller for potential reuse to be a RCRA generator.

Furthermore, EPA today clarifies that used CRTs undergoing repairs before resale or distribution are not being ''reclaimed,'' and are considered to be products ''in use'' rather than solid wastes. Resellers of used CRTs generally test and identify equipment that can be resold or is economically repairable. Sometimes the equipment is collected and redistributed for reuse with no repairs. If repairs are necessary, they typically consist of rewiring, replacing defective parts, or replacing the electron gun. Under these circumstances, the CRT would still be considered a commercial product rather than a solid waste. EPA believes that these repairs and replacement activities do not constitute waste management.

b. Unused CRTs sent for recycling. Sometimes manufacturers of computers and televisions send unused CRTs (usually off-specification CRTs) directly to glass processors who break the CRTs and separate out the glass components. Generally, the processor then sends the processed glass to a glass-to-glass recycler or to another recycling facility, such as a lead smelter. Although EPA could consider these activities to constitute reclamation, the Agency does not regulate the reclamation of either listed or characteristic unused commercial chemical products (*see* 50 FR 14219, April 11, 1985). EPA considers unused CRTs to be unused commercial chemical products. Therefore, these materials are not solid wastes when sent for reclamation.

c. Used CRTs sent for recycling. Under the current RCRA regulations, used CRTs sent directly to glass processors or other recyclers could under some circumstances be considered spent materials undergoing reclamation, and could therefore be solid wastes. However, as explained elsewhere in this notice, EPA believes that under some circumstances used CRTs sent for recycling do not resemble spent materials. Therefore, users and resellers sending used CRTs to recyclers should check with their authorized States to see which Subtitle C requirements, if any, are applicable to their activities. EPA encourages States to take approaches consistent with today's proposal. The Agency is today proposing an exclusion from the definition of solid waste for used CRTs being recycled if they are managed under certain conditions. This proposal is discussed later in this notice.

d. Disposal. If a non-household entity decides to send used or unused CRTs directly to a landfill or an incinerator for disposal, that entity would be considered the generator of a solid waste. The person making the decision must determine if the CRTs exhibit a hazardous waste characteristic under 40 CFR part 261, subpart C. He may either test the CRTs or use process knowledge to make this determination. As stated above, many or most CRTs from color computer or television monitors exhibit the toxicity characteristic for lead. Although EPA's data indicate that most CRTs from black and white monitors do not fail the TC, those that do are subject to all applicable hazardous waste management requirements. When a

decision is made to dispose of hazardous waste CRTs, the non-residential user, reseller, or manufacturer must comply with all applicable hazardous waste generator requirements of 40 CFR part 262, including packaging and labeling, 90-day accumulation requirements, use of the hazardous waste manifest, and recordkeeping and reporting (unless the generator is a CESQG).

Some companies ship their waste CRTs to hazardous waste landfills for disposal. Used CRTs generated by a non-residential facility that fail the TC for lead must meet applicable land disposal restrictions (LDRs) before being placed in a land-based unit, such as a landfill. These restrictions do not apply to CRTs generated by households or CESQGs. To meet LDRs, the CRT glass must be treated so that the TCLP lead concentration does not exceed 0.75 mg per liter. This concentration level is generally achieved by crushing and stabilizing the glass through the addition of chemicals which reduce the solubility of lead when contacted by leachate.

3. When Do Non-CRT Electronic Materials Become Wastes?

In 1992, the Agency issued a memorandum to its EPA Regional Waste Management Directors stating that used whole circuit boards are considered to be scrap metal when sent for reclamation, and therefore exempt from regulation under RCRA. The Agency has also addressed printed circuit boards in the Land Disposal Restrictions Phase IV rulemaking (*see* 62 FR 25998, May 12, 1997). In that rulemaking, the Agency provided an exclusion from the definition of solid waste at 40 CFR 261.4(a)(14) for shredded circuit boards being reclaimed, provided they are stored in containers sufficient to prevent a release to the environment prior to recovery and provided they are free of mercury switches, mercury relays, nickel-cadmium batteries and lithium batteries. Subsequently, on May 26, 1998 (63 FR 28556), the Agency clarified that the scrap metal exemption applies to whole used circuit boards that contain minor battery or mercury switch components and that are sent for continued use, reuse, or recovery. In that notice, EPA stated that it was not the Agency's intent to regulate under RCRA circuit boards containing minimal quantities of mercury and batteries that are protectively packaged to minimize dispersion of metal constituents. Once these materials are removed from the boards, they become a newly generated waste subject to a hazardous waste determination. If they meet the criteria to be classified as a hazardous waste, they must be handled as hazardous waste; otherwise they must be managed as a solid waste.

The Agency is studying certain non-CRT electronic materials to determine whether they consistently exhibit a characteristic of hazardous waste. However, we are not currently aware of any non-CRT computer components or electronic products that would generally be hazardous wastes. With respect to these materials, the Agency would use the same line of reasoning that is outlined above for CRTs to determine if the materials are solid wastes. That is, if an original user sends electronic materials to a reseller because he lacks the specialized knowledge needed to determine whether the units can be reused as products, the original user is not a RCRA generator. The materials would not be considered solid wastes until a decision was made to recycle them in other ways or dispose of them.

F. What Are The Common Sense Initiative (CSI) Recommendations?

From 1994 through 1998, EPA's Common Sense Initiative (CSI) explored the environmental regulation of six industry sectors and looked for ways to make environmental regulation ''cleaner, cheaper, and smarter.'' EPA established CSI as an advisory committee (the ''CSI Council'') under the Federal Advisory Committee Act. The CSI Council included representatives from each industry sector, from non-governmental environmental and community organizations, from state governments, and from colleges and universities. EPA also established subcommittees of the Council for each industry sector. The subcommittees included representatives of the various stakeholders represented in the CSI Council. One of the industry sectors selected for this initiative was the computer and electronics industry. The CSI Computers and Electronics Subcommittee (CES) then formed a workgroup to examine regulatory barriers to pollution prevention and recycling. The workgroup (known as the ''Overcoming Barriers Workgroup'') explored the problems of managing mounting volumes of outdated computer and electronics equipment.

One of the concerns investigated by the Overcoming Barriers Workgroup and the CES was the barrier to CRT recycling created by some existing hazardous waste management regulations. The CES urged that removing such barriers was essential to fostering CRT recycling, especially glass-to-glass recycling. The Subcommittee believed that CRT recycling would provide the following benefits: (1) Less lead sent to landfills and combustors; (2) added resource value of specialty glass and lead; (3) lower waste management costs; (4) less regulatory uncertainty about CRT recovery and recycling; (5) less use of raw lead in CRT glass manufacturing; (6) better melting characteristics, improved heat transfer, and lower energy consumption in CRT glass manufacturing furnaces; (7) improved CRT glass quality; and (8) lower emissions of lead from CRT glass manufacturing. The CES Subcommittee indicated that some recycling methods or end products (other than those associated with glass-to-glass recycling) may pose risks to human health and the environment and would require further investigation.

As a result of the finding of the CES Subcommittee, the CSI Council issued a document titled *Recommendation on Cathode Ray Tube (CRT) Glass-to-Glass Recycling.* In this document, the Council recommended streamlined regulatory requirements for CRTs that would encourage recycling and better management. The recommendations included streamlined requirements for packaging, labeling, transportation; general performance standards for glass processors; and export provisions. The CSI Council also recommended an exclusion from the definition of solid waste for processed glass that is used to make new CRT glass. In today's document, EPA proposes an exclusion from the definition of solid waste which would streamline management requirements for used CRTs. Although the requirements proposed today are more streamlined that those recommended by the CSI Council, we believe that they will be just as effective in fostering the goals of the Council. The Agency is also soliciting comment on several alternative management requirements.

G. Proposed Requirements for Used CRTs Undergoing Recycling

1. What Will Not Be Affected by Today's Proposed Rule?

All materials discussed above that are not currently regulated under RCRA will remain unaffected by today's proposal. Used CRTs from households and CESQGs will retain their current regulatory exemptions. Used CRTs from any source that are sent for reuse as is or after minor repairs are not wastes. Proposed § 261.4(a)(23) will provide better notice of this interpretation of our current regulations. Unused CRTs sent for recycling will still be classified as commercial chemical products which are not solid wastes even if they are

reclaimed or speculatively accumulated. Finally, both used and unused CRTs sent for disposal will also remain regulated as before.

2. What Is Covered by Today's Proposed Rule and What Are the Proposed Management Requirements?

Today's proposal principally addresses used CRTs destined for recycling and processed glass from CRTs. The regulations we are proposing distinguish between intact CRTs and CRTs that are broken. An intact CRT is a CRT remaining within the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released. EPA notes that these proposed definitions would also cover non-consumer CRTs such as medical, automotive, oscilloscope, and appliance CRTs.

a. Used, Intact CRTs Destined for Recycling. Today's proposal would exclude intact CRTs from the definition of solid waste unless they are disposed. Consequently, these units would not be subject to Subtitle C regulation, including the speculative accumulation limits of 40 CFR 261.2(c)(4). They could therefore be held indefinitely without becoming solid wastes.

Intact CRTs are highly unlikely to release lead to the environment because the lead is contained in the plastic housing and the glass matrix. Because of this low likelihood of release, EPA is today proposing reduced requirements for broken CRTs which are based on findings that these materials merit exclusion from the definition of solid waste. For the sake of regulatory simplicity, the Agency is proposing to codify all of the reduced requirements for CRTs in one section of the Code of Federal Regulations, under the list of exclusions from the definition of solid waste.

As noted above, unused CRTs are currently considered commercial chemical products which are excluded from the definition of solid waste when recycled, even if they are reclaimed or speculatively accumulated. We believe that it would be very difficult to distinguish between used and unused intact CRTs destined for recycling. Moreover, there appears to be no environmental basis for such a distinction. Therefore, EPA is proposing to grant relief from Subtitle C requirements for all intact CRTs unless they are disposed, whether used or unused.

b. Used, Broken CRTs Destined for Recycling. Some users and collectors of CRTs separate the CRT from the monitor and release the vacuum, after which they send the resulting broken glass to a recycler (often a glass processor). This practice saves shipping costs and enables the glass processor to pay more for the broken CRTs received. At other times, the CRTs are first broken by the processor or other recycler. CRTs whose glass has been broken by releasing the vacuum are non-reusable and non-repairable; they are therefore solid wastes at the time such breakage occurs.

EPA is proposing today to amend 40 CFR part 261 to add a new § 261.39(a), which will provide that used, broken CRTs are excluded from the definition of solid waste if they meet specified conditions. Under today's proposal, used, broken CRTs sent for recycling would not be solid wastes if they are stored in a building with a roof, floor, and walls. If they are not stored in a building, they must be stored in a container (*i.e.,* a package or a vehicle) that is constructed, filled, and closed to minimize identifiable releases of CRT glass (including fine solid materials) to the environment. The packages must also be labeled or marked clearly. When transported, the broken CRTs must also be in a container meeting the conditions described above. Used, broken CRTs destined for recycling would also not be allowed to be speculatively accumulated as defined in 40 CFR 261.1.

The Agency believes that if these materials are properly containerized and labeled when stored or shipped prior to recycling, they resemble articles in commerce or commodities more than wastes. Breakage is a first step toward recycling the leaded glass components of the CRT. Also, materials held in conditions that safeguard against loss are more likely to be regarded as valuable commodities destined for legitimate recycling. In addition, the proposed packaging requirements would ensure that the possibility of releases to the environment from the broken CRTs is very low. For these reasons, an exclusion from the definition of solid waste is appropriate if the broken CRTs are handled under the conditions proposed today.

Today's proposal would require used, broken CRTs that are imported for recycling to comply with the packaging and labeling requirements specified above when they enter the borders of the United States in order to be eligible for the exclusion. Similarly, they could not be speculatively accumulated after arriving in the country. However, they would not be subject to any of the hazardous waste import requirements of 40 CFR part 262, subparts F and H.

Used, broken CRTs that are exported would not be solid wastes if they were packaged and labeled as described above, and if they were not speculatively accumulated. Exports of broken CRTs meeting these conditions would therefore not be subject to the hazardous waste export requirements of 40 CFR part 262, subparts E and H, including the hazardous waste notification requirements.

c. Used, broken CRTs Undergoing Glass Processing. The Agency also proposes today an exclusion from the definition of solid waste for used CRTs undergoing glass processing, as long as the processing meets certain conditions. CRT glass processing is defined in proposed 40 CFR 260.10 as receiving intact or broken used CRTs, intentionally breaking them, sorting or otherwise managing glass removed from CRT monitors, and cleaning coatings from the glass. As noted above, CRT users and collectors sometimes break CRTs before sending them to a processor. Therefore, breaking used CRTs would not by itself subject a facility to the CRT glass processing conditions. In order to be classified as a used CRT glass processor, the facility must perform all of the activities listed above.

The provisions of today's proposed 40 CFR 261.39(b) state that used, broken CRTs undergoing glass processing would not be considered solid wastes if they are stored in a building with a roof, floor, and walls. If they are not stored inside a building, they must be packaged and labeled under conditions identical to those proposed above for used, broken CRTs prior to processing. In addition, all glass processing activities must take place within a building with a roof, floor, and walls, and no activities may be performed that use temperatures high enough to volatilize lead from used, broken CRTs. In order to be eligible for the exclusion proposed today, the used, broken CRTs could not be speculatively accumulated as defined in 40 CFR 261.1. As discussed above, EPA is today proposing an unconditional exclusion for used, intact CRTs if they are sent for recycling (including glass processing). Under today's proposal, no other conditions would apply to intact CRTs.

EPA believes that the packaging and storage conditions proposed today indicate that the materials in question are more commodity-like than waste-like. Used, broken CRTs that are not stored or packaged in accordance with these requirements would not be valuable, product-like materials. The opportunity for loss or releases of the materials would indicate that they are wastes. As specifically recommended by the CSI Council, we are also proposing

that processors be required to conduct their activities without using temperatures high enough to volatilize lead from broken CRTs. Besides increasing the risk of releases to the environment, such practices could be a sign of waste treatment rather than production.

d. Processed Glass From Used CRTs Sent for Recycling to Glass Manufacturers and Lead Smelters. In today's document, the Agency is proposing in 40 CFR 261.39(d) to exclude processed glass from used CRTs from the definition of solid waste if it is sent for recycling to a CRT glass manufacturer or to a lead smelter, as long as the processed glass is not speculatively accumulated, and as long as it is not used in a manner constituting disposal.

EPA believes that processed glass from used CRTs destined for CRT glass manufacturing or sent to a lead smelter meets the regulatory criteria in 40 CFR 260.31(c) for a variance from the definition of solid waste. This variance applies to materials that have been reclaimed but must be reclaimed further before recovery is completed, if, after initial reclamation, the resulting material is commodity-like. The following paragraphs discuss the characteristics of processed CRT glass and how they meet the criteria.

i. The degree of processing a material has undergone and the degree of further processing that is required (40 CFR 260.31(c)(1)). Processed CRT glass needs minimal further processing by CRT glass manufacturers or lead smelters. CRT glass cullet is shipped to these facilities already cleaned and sorted. CRT manufacturers and smelters perform processing steps consisting only of magnetic separation of anode buttons and studs and, if necessary, further crushing of the glass. Following these steps, the partially reclaimed CRT glass enters the furnace or smelter, similar to other feedstocks used in glass manufacturing and smelting.

ii. The economic value of the material that has been initially reclaimed (40 CFR 260.31(c)(2)). The initial processing of CRT glass satisfies this criterion. CRT glass is usually purchased by CRT glass manufacturers from processors for at least $170 per ton (approximately three-fourths of the price of virgin glass). In contrast, lead smelters are usually paid at least $150 per ton by processors for CRT glass used as fluxing material and lead feedstock. However, lead smelters only pay an average of about six dollars per ton for industrial sand used as a fluxing material. Broken glass from CRTs resembles industrial sand in composition and can therefore serve as a substitute for this sand in the fluxing process. The sand, however, is not expensive.

CRT glass manufacturers and lead smelters currently obtain processed CRT glass from processors and are working with the processors to increase the supply and quality of processed CRT glass, which may further increase value. The value of processed CRT glass depends on whether manufacturers' specifications are met, and some glass chemistries require exacting specifications that make the processed glass more valuable if it meets those specifications. CRT glass manufacturers have stricter quality standards than lead smelters about the type of material that they can accept (e.g., cleaned, sized, free of coating and debris).

Further evidence of the economic value of reclaimed CRT glass is demonstrated by the cost savings realized by CRT glass manufacturers and lead smelters when using processed CRT glass. The use of processed CRT glass cullet benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or improving the quality of the final product.

iii. The degree to which the reclaimed material is like an analogous raw material (40 CFR 260.31(c)(3)). Under this criterion, the partially reclaimed material must be similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. Processed CRT glass is similar to off-specification glass and cullet that manufacturers currently use as feedstock. Glass-making furnaces require between approximately 30 and 70 percent cullet. With respect to lead smelters, processed CRT glass is similar to industrial sand that would otherwise be used as feedstock or flux in the smelter.

iv. An end market for the partially reclaimed material is guaranteed (40 CFR 260.31(c)(4)). The Agency believes that there is a strong end market for processed CRT glass. CRT glass manufacturers and lead smelters have developed relationships with CRT glass processors to increase the amount and quality of reclaimed CRT glass cullet available for glass-to-glass recycling and lead reclamation. In addition, CRT glass manufacturers have developed programs in which off-specification CRTs may be delivered directly to CRT processors for initial processing. The processed CRT glass is delivered to CRT glass manufacturers for use as feedstock in glass-to-glass manufacturing, or to lead smelters for recycling.

v. The extent to which the partially reclaimed material is handled to minimize loss (40 CFR 260.31(c)(5)). The Agency believes that current CRT glass industry practices are effective in minimizing losses and preventing releases. Processed CRT glass generally is stored indoors on a cement or asphalt pad. In most cases, the material is shipped in large capacity trucks that are covered with a tarp to minimize loss during transport. When the CRT glass manufacturers or lead smelters receive shipments, the glass is unloaded into a temporary holding area, inspected, and either loaded onto a conveyor belt for further processing or stored under cover. Following these steps, the reclaimed CRT glass enters the furnace feedstock stream or the smelter.

e. Processed glass from Used CRTs Sent For Other Types of Recycling. Under today's proposal, processed glass from used CRTs sent for recycling at a facility other than a glass manufacturer or a lead smelter would be excluded from the definition of solid waste only if additional conditions were met. The processed glass would have to be packaged and labeled in accordance with the requirements of proposed 40 CFR 261.39(a). Also, speculative accumulation limits would apply.

As stated previously, processed glass is sometimes sent to copper smelters for recycling. It also may be sent for recycling into objects such as radiation shielding, acoustical barriers, optical glass beads, or decorative glass and tile products. The Agency believes that processed glass sent for such uses resembles a commodity more than a waste if it is packaged and labeled under these conditions. In addition, such packaging ensures that the possibility of releases to the environment is minimal.

f. Processed Glass From Used CRTs Used in a Manner Constituting Disposal. If processed glass is sent for any kind of recycling that involves land placement, it would be subject to the requirements of 40 CFR part 266, subpart C, for recyclable materials used in a manner constituting disposal. The Agency is currently unaware of processed glass being recycled in this manner.

g. Imports and Exports. Import requirements were discussed above for used, broken CRTs prior to recycling. Similar import requirements would apply to used, broken CRTs sent to the United States and held at glass processing facilities, as well as already processed glass from used, broken CRTs sent to the United States. In all cases, the material would be subject to the

conditions proposed today, rather than the import requirements of 40 CFR part 262. Similarly, as long as used CRTs (or processed glass from used CRTs) met the conditions proposed today, the export requirements of 40 CFR part 262 would not apply.

H. Solicitation of Comment on EPA's Proposed Management Requirements for Used CRTs and Processed CRT Glass

EPA believes that today's proposed exclusion from the definition of solid waste is the regulatory scheme which will best promote the CSI Council goals of improved management and increased recycling of the CRT wastestream. The requirements proposed in today's notice are more streamlined than those recommended by the CSI Council. However, we believe that these requirements, if finalized, will lead to better management and more recycling while affording full protection to human health and the environment.

The Agency is also soliciting comment today on several other recommendations of the CSI Council, on certain other regulatory alternatives for CRTs that are not proposed today, and on a proposed change to the universal waste rule. These solicitations are discussed below.

1. Universal Waste Alternative

The CSI Council envisioned that CRTs would be added to the universal waste rule, which distinguishes between small quantity handlers of universal waste (SQHUWs) and large quantity handlers of universal waste (LQHUWs). The accumulation limit for LQHUWs recommended by the CSI Council was 36,287 kilograms (for CRTs stored on-site for longer than seven consecutive days). Other universal waste requirements applicable to both SQHUWs and LQHUWs that are not proposed today for regulated entities include employee training requirements. The Agency also is not proposing to require that regulated entities notify the appropriate EPA Region of their CRT waste management activities, and track shipments of CRTs sent and received, which would have been required of LQHUWs under the CSI recommendations. The Agency solicits comment on whether these requirements would be appropriate or burdensome for any entities engaged in breaking or processing CRT glass, or for collectors who send used CRTs or CRT glass to glass processors.

2. Definition of ''Broken CRT''

EPA is today proposing streamlined requirements for broken CRTs sent for recycling. ''Broken CRT'' is defined as ''glass removed from the monitor after the vacuum has been released''. Data available to the Agency indicate that after the vacuum has been released and the glass removed, the CRT is generally no longer reusable as a product. However, EPA solicits comment on whether it might be possible to repair and reuse a CRT after the vacuum has been released and the glass removed from the monitor, as well as suggested alternative definitions for ''broken CRT'.

3. Alternative Approaches to Speculative Accumulation and Use Constituting Disposal (Land Placement)

EPA notes that under today's proposal, broken CRTs (but not intact CRTs) that are sent for recycling in accordance with the packaging and labeling requirements of proposed 40 CFR 261.39 would be subject to the speculative accumulation provisions of 40 CFR 261.1(c)(8). The Agency solicits comment on whether a longer accumulation time period (such as two or more years) should be provided for CRTs, in order to allow recycling markets to develop more fully for this relatively new wastestream and because there appear to be few environmental concerns with storage as long as these materials are packaged and labeled properly. EPA also solicits comment on whether intact CRTs sent for recycling should be subject to the speculative accumulation provisions, or whether they resemble commercial chemical products being reclaimed. In addition, the Agency requests comment on whether to add a condition prohibiting use constituting disposal or land placement of broken CRTs (as is proposed today for processed CRT glass). The Agency is not aware of any current uses for broken CRTs or processed CRT glass that involve use constituting disposal, and we solicit comment on the existence of any such uses and their implications.

4. Alternative Standards for Processing Used CRTs

EPA also solicits comment on the appropriateness of requiring additional performance standards for glass processors. The CSI Council recommended that glass processors install and maintain systems sufficient to minimize releases of glass and glass particulates via wind dispersal, runoff, and direct releases to soil. It also recommended that processing be performed at temperatures low enough to avoid volatilization of lead from the glass. Today's proposal contains the requirement for processing temperatures, but took a different approach than proposing the general performance standard recommended by the CSI Council. Today's proposed conditions for excluding glass being processed from the definition of solid waste are very similar to management standards cited by the CSI Council as examples of conformance to its recommended performance standards. For example, the Council stated that storing broken CRTs and CRT glass in buildings or closed containers were examples of ways to control wind dispersal, runoff, and direct releases to soil. EPA therefore believes that today's proposed requirements, in addition to being indications that the materials in question resemble commodities rather than wastes, are adequate to fulfill the concerns of the CSI Council. However, the Agency solicits comment on whether to require the general performance standards recommended by the Council.

EPA also solicits comment on whether to retain today's proposed requirement that glass processing be conducted at temperatures that are not sufficiently high to volatilize lead. We note that worker health and safety would be covered under the provisions of 29 CFR part 1910 of the Occupational Safety and Health Administration (OSHA). The Agency seeks comment on whether today's proposed temperature requirement is necessary to prevent volatilization of lead, and also on whether glass processing conducted at high temperatures is an indication of waste management.

EPA would also like to solicit comment on the CSI Council recommendation that glass processors implement a procedure for advising local communities of the nature of their activities, including the potential for resident and worker exposure to lead or chemical coatings. In general, EPA has not required public participation for hazardous waste recycling facilities, unless they obtain RCRA permits for storage of hazardous waste prior to recycling. Usually, local notice and public meetings are governed by preexisting state or local requirements concerning siting, zoning, or licensing. The Agency believes that matters of local notice and public participation are generally best decided at the state, county, or municipal level, but solicits comment on whether to require additional procedures under federal regulations in the case of CRT recycling, and the reasons why these procedures are needed.

5. Alternative Standards for Processed Glass From Used CRTs Sent for Recycling

In addition, EPA solicits comment on whether to exclude from the definition of solid waste under 40 CFR 261.4(b))(39) only processed glass recycled by being sent to CRT glassmaking, as recommended by the CSI Council. EPA notes that the recommendations of the CSI Council did not include an exclusion for processed glass sent to lead smelters, and that the Council expressed concerns about possible environmental risks associated with this practice. However, after evaluation of this question, the Agency has decided, as explained previously in this preamble, that processed glass sent to lead smelters is more like a commodity than a waste. EPA believes that such an exclusion would be desirable because recycling CRTs at lead smelters appears to be just as legitimate as glass-to-glass recycling. The proposed exclusion may also turn out to be useful if the increased use of flat screens decreases the potential for glass-to-glass recycling.

EPA is also soliciting comment today on whether to exclude from the definition of solid waste CRT glass sent to copper smelters or other glass uses without packaging and labelling requirements. The Agency is aware that processed CRT glass has been shipped for recycling to copper smelters, but we lack much information about this practice. We request comment on whether this glass is as commodity-like as that sent to glass-to-glass recycling or lead smelters. We also solicit comment on whether the exclusion should be allowed for other glass uses. These glass uses are currently being developed and include optical beads, decorative objects, radiation shielding materials, and acoustic barriers for use in the aerospace industry and in equipment manufacturing where sound control is essential. EPA believes that CRT glass being recycled into some of these products would likely be a commodity-like material which would meet the variance criteria described above. We therefore solicit additional information about these uses, or other uses of which commenters may be aware, and on whether CRT glass used for these purposes is commodity-like.

6. Exports of Used CRTs

With respect to exports, the Agency notes that the CSI Council also developed recommendations for exporting CRT glass. The recommendations include exporting provisions for CRTs, coated (*i.e,* unprocessed) CRT glass, and uncoated (processed) CRT glass. For each category, the CSI Council recommended administrative requirements, depending on whether or not the shipment is destined for an Organization for Economic Cooperation and Development (OECD) country.

Under the CSI recommendations, entities exporting CRTs and coated CRT glass would be subject to the same exporting provisions as generators of hazardous waste in Subparts E or H of Part 262 (export notice and consent procedures for non-OECD and OECD countries); such provisions would be revised to specifically identify the recipient as a collector or processor. For shipments of uncoated CRT glass to those OECD countries specified in 40 CFR 262.58(a)(1), the exporter would be required to provide an annual report to EPA summarizing the number of shipments and volume sent to each recipient (by country), and identifying the recipient CRT glass collector and processor. For shipments of uncoated CRT glass to non-OECD countries, the exporter would be required to send annual notification to EPA 90 days prior to the first shipment to each recipient, identifying the country, the recipient CRT glass collector or processor, and the expected number and volume of shipments to be sent that year.

EPA notes that today's proposal would exclude from the definition of solid waste used intact CRTs sent for recycling, along with used, broken CRTs sent for recycling if they are packaged and labeled in accordance with the conditions proposed in 40 CFR 261.39. Similarly, processed glass would be exempt from the definition of solid waste if sent to CRT glassmaking or a lead smelter. Since these materials would no longer be considered solid or hazardous wastes, the Agency would not have the legal authority to require notification under 40 CFR part 262, subparts E and H, or the authority to require additional notifications. The Agency notes that if used CRTs were added to the universal waste program, EPA would have authority to require notification at least for exported broken CRTs. EPA solicits comment on whether the need for the export notification requirements recommended by the CSI would warrant adding used CRTs to the universal waste program, and whether these requirements would be unduly burdensome.

7. Disposal of CRTs

Finally, the Agency requests comment on whether to allow CRTs sent for disposal in hazardous waste facilities (*i.e.,* landfills or incinerators) to comply with streamlined packaging and labeling requirements similar to those proposed today for broken CRTs sent for recycling, rather than comply with full Subtitle C requirements. EPA also seeks comment on whether adding used CRTs to the universal waste program, which would provide packaging and labeling requirements (as well as tracking requirements for larger quantities of CRTs) would provide better management of these wastes through improved compliance, and whether such requirements would adequately protect human health and the environment.

IV. Mercury-Containing Equipment

A. What Is ''Mercury-Containing Equipment?'

In response to the 1993 universal waste proposal (58 FR 9346, February 11, 1993), some commenters suggested adding used mercury-containing equipment (such as switches, relays, and gauges) to the universal waste rule at 40 CFR part 273. In the 1995 final rule, however, the Agency did not include these materials in the universal waste program, stating in the preamble that we lacked sufficient information to justify such a decision (60 FR 25942, 25508, May 11, 1995). In particular, EPA did not have data about which kinds of wastes should be included in the suggested category, the amount of mercury in the wastes, and which management controls would be effective. We stated that we would welcome a petition which would provide enough information to add some forms of mercury-containing equipment to the universal waste program.

On October 11, 1996, the Utility Solid Waste Activities Group (USWAG), the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association submitted a petition to add mercury-containing equipment to the universal waste program. This petition identified many types of mercury-containing equipment, including several kinds of instruments that are used throughout the electric utility and other industries, municipalities, and households. These devices include manometers, barometers, hagenmeters, relay switches, mercury wetted switches, mercury regulators, meters, temperature gauges, pressure relief gauges, water treatment pressure gauges, sprinkler system contacts, power plant water treatment gauges, and variable force counterweight wheels used in coal conveyor systems.

B. Why Is EPA Proposing To Add Mercury-Containing Equipment To The List of Universal Wastes?

The USWAG petition contained useful information describing how such equipment would meet the regulatory criteria for adding wastes to the universal waste program set forth at 40 CFR 273.81. After examining the information contained in the petition, we have decided to propose adding spent mercury-containing equipment to the universal waste rule. Following is a description of the regulatory criteria for adding wastes to the universal waste rule, and why the Agency believes that used mercury-containing equipment meets these criteria. In particular, EPA believes that adding these wastes to the universal waste rule will facilitate collection of mercury-containing equipment, thereby reducing the amount of mercury reaching municipal landfills and incinerators. USWAG has estimated that approximately 3,000 pounds of such equipment is generated annually by electric and gas utilities and by other businesses.

1. The Waste, as Generated by a Wide Variety of Generators, Should Be a Listed or Characteristic Hazardous Waste (40 CFR 273.81(a))

The category of mercury-containing equipment consists of such devices as thermometers, manometers, barometers, relay switches, mercury regulators, meters, pressure relief gauges, water treatment pressure gauges, and sprinkler system contacts. Most mercury-containing equipment has a few grams of mercury, although devices such as large manometers may contain much more. Many of these devices would fail the TCLP toxicity level for mercury of 0.2 mg per liter, and would be classified as D009 characteristic hazardous waste. They would therefore meet the first regulatory criterion.

2. The Waste, or Category of Waste, Should Not Be Exclusive To a Particular Industry or Group of Industries, but Generated by a Wide Variety of Establishments (40 CFR 273.81(b))

Used mercury-containing equipment meets this criterion because it is discarded by many different kinds of generators. Although electric and gas utilities generate the largest number of such devices, many other businesses use instruments designed to measure or regulate pressure or temperature, such as thermometers, barometers and manometers. In addition, regulators, switches, and relays often contain mercury for use as an electric conductor. These devices are used widely in manufacturing industries, retail and commercial establishments (including the dairy industry), office complexes, hospitals, municipalities, and (in the case of certain wastes such as thermometers and mercury switches) domestic households. Sources of this wastestream are many and varied.

3. The Waste Should Be Generated by a Large Number of Generators and Generated Frequently, but in Relatively Small Quantities (40 CFR 273.81(c))

Spent mercury-containing equipment would meet this criterion even if electric utilities alone were counted. Some large electric utilities have several hundred individual generation points throughout their distribution network, including generating stations, service centers, substations, and transformer vaults. In addition, utilities perform servicing operations on meters, regulators, and other mercury-containing equipment at many customer locations; a large utility may have more than 1,000 customer sites. Most facilities, whether utilities or not, tend to generate mercury-containing wastes sporadically and in relatively small quantities because equipment failures are relatively numerous (due to the large number of generation points) and unpredictable, while not producing large quantities of waste equipment. The Utility Solid Waste Activities Group estimates that a single mid-sized electric utility generates from 2,000 to 4,000 pieces of mercury-containing equipment annually.

4. Systems To Be Used for Collecting the Waste (Including Packaging, Marking, and Labeling Practices) Should Ensure Close Stewardship of the Waste (40 CFR 273.81(d))

EPA believes that the universal waste program is a very effective way to ensure such stewardship. The Agency is today proposing to require small and large-quantity universal waste handlers of spent mercury-containing equipment to label or mark such equipment clearly, similar to the requirements for other handlers of universal wastes in 40 CFR 273.14 and 273.34.

To further encourage responsible stewardship, EPA is also proposing to require universal waste handlers of mercury-containing equipment to manage it in accordance with the universal waste management standards currently in place for used thermostats, because both kinds of devices contain mercury in ampules which are sometimes removed. Today's proposal would require handlers who remove ampules from spent mercury-containing equipment to comply with the provisions of 40 CFR 273.13 (described later in this notice).

5. The Risks Posed by the Waste During Accumulation and Transport Should Be Relatively low Compared to the Risks Posed by Other Hazardous Waste, and Specific Management Standards Would Be Protective of Human Health and the Environment During Accumulation and Transport (40 CFR 273.81(e))

The Agency believes that spent mercury-containing equipment poses risks that are relatively low compared to other hazardous wastes because they tend to be generated in relatively small amounts at any one time by each generator. In addition, the elemental mercury contained in such devices is generally fully enclosed within the equipment. The danger of spills and leaks during accumulation and transport is therefore low when the equipment is packaged correctly. In addition, USWAG has suggested, and the Agency is today proposing, that spent mercury-containing equipment be managed in accordance with the requirements of the universal waste rule at 40 CFR 273. These requirements will ensure that the devices are handled safely during accumulation and transport. Besides the provisions discussed above that are specific to accumulation, packaging, and transport of mercury-containing universal wastes, the universal waste program requires handlers to train employees in proper handling and emergency procedures and to contain all releases of universal wastes immediately. Handlers may accumulate universal wastes for no longer than one year.

The universal waste rule also contains several provisions which ensure safe transport. For example, handlers may send universal waste only to another universal waste handler, a destination facility, or a foreign destination. If the handler sends a universal waste off-site which meets the definition of hazardous materials under the Department of Transportation (DOT) regulations (49 CFR parts 171 through 180), the handler must package and label the shipment in accordance with those regulations and prepare the proper DOT shipping papers. If a handler of universal waste sends a shipment which is rejected, the handler must either take the waste back or agree with the rejecting facility to send the waste to a destination facility. If a handler receives a shipment containing hazardous waste that is not universal waste, the handler must immediately notify the appropriate EPA regional office. Finally, large quantity handlers of universal waste must keep records of each shipment of universal

waste received or sent off-site. These requirements ensure that spent mercury-containing devices will be transported safely.

6. Regulation of the Waste Under 40 CFR Part 273 Will Increase the Likelihood That the Waste Will Be Diverted From Non-Hazardous Waste Management Systems (*e.g.,* the Municipal Waste Stream, Non-Hazardous Industrial or Commercial Waste Stream, Municipal Sewer or Stormwater Systems) to Recycling, Treatment, or Disposal in Compliance With Subtitle C of RCRA (40 CFR 273.81(f))

If spent mercury-containing equipment was added to the universal waste program, thousands of sites that generate such devices would be considered handlers of universal wastes, rather than individual hazardous waste generators. Because the hazardous waste manifest would no longer be required, it would be easier to transport these wastes to central consolidation points. Collecting the wastes at such central points makes it easier to send them for recycling or for proper disposal, which makes it less likely that the wastes will be improperly disposed of in municipal landfills or incinerators. In addition, waste handlers that wish to consolidate large volumes of waste from conditionally exempt small quantity generators (CESQGs) must now obtain a RCRA permit if they accumulate more than 1000 kg of such waste on-site, pursuant to 40 CFR 261.5(g)(2). This requirement severely discourages the central collection of large amounts of CESQG waste. If spent mercury-containing equipment is included in the universal waste system, collectors of these wastes would be encouraged to gather these wastes (along with non-CESQG waste and household waste) for recycling or proper disposal. More of these materials would be kept out of the municipal wastestream if they were available for removal of elemental mercury and recycling of scrap metal.

In addition, if spent mercury-containing equipment is included in the universal waste program, handlers will be less likely to try to separate the hazardous and non-hazardous portions of this waste. Because the requirements of the universal waste rule are relatively streamlined, and because sampling of mercury-containing devices can sometimes be difficult, handlers will find it easier to manage the entire wastestream as universal waste. Therefore, waste that would otherwise go to municipal landfills or combustors would be sent for recycling or proper disposal. For these reasons, EPA believes that adding mercury-containing equipment to the universal waste program will help fulfill the criterion in 40 CFR 273.81(f).

7. Regulation of the Waste Under 40 CFR part 273 Will Improve the Implementation and Compliance With the Hazardous Waste Regulatory Program (40 CFR 273.81(g))

EPA believes that the requirements of the universal waste rule are particularly suited to the circumstances of handlers of spent mercury-containing equipment, and that their participation in the universal waste program will improve compliance with hazardous waste regulations. As stated earlier, spent mercury-containing equipment is generated sporadically and in small quantities by many geographically dispersed operations. The existence of so many distribution points, along with the small quantities of waste, makes compliance with full Subtitle C requirements very difficult. Compliance with full hazardous waste generator requirements is particularly difficult for electric or gas utility operations which are located on customers' properties. The requirements of the universal waste rule are clear and should be easily understood by the diverse community affected by this proposal, who will not need to spend an excessive amount of time and effort interpreting the regulations. In addition, because the rule does not require handlers to count universal wastes toward their monthly quantity determination, many handlers will find it easier to determine their hazardous waste generation rates. The Agency believes that the streamlined requirements of this proposal will make compliance more achievable, and that human health and the environment will benefit as a result.

C. What Are EPA's Proposed Management Requirements for Used Mercury-Containing Equipment?

1. Summary of Proposed Requirements

The universal waste rule classifies regulated persons managing universal waste into four categories: small quantity handlers of universal waste (SQHUWs), large quantity handlers of universal waste (LQHUWs), transporters, and destination facilities. The term ''universal waste handler'' is defined in 40 CFR 273.9 as a generator of universal waste; or the owner or operator of a facility that receives universal waste from other universal waste handlers, accumulates universal waste and sends it to another universal waste handler, a processor, a destination facility, or a foreign destination. The definition of ''universal waste handler'' does not include: (1) a person who treats (except under the provision of § 273.13(a) or (c), or § 273.33(a) or (c)), disposes of, or recycles universal waste; or (2) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Whether a universal waste handler is a SQHUW or LQHUW depends on the amount of universal waste being accumulated at any time. A SQHUW is defined under 40 CFR 273.9 as a universal waste handler who accumulates less than 5,000 kilograms of universal waste, calculated collectively at any time. The 5,000 kilogram accumulation limit applies to the total quantity of all universal waste handled on-site, regardless of the category of universal waste. If at any time a SQHUW accumulates 5,000 kilograms or more of universal waste, then the universal waste handler becomes a LQHUW for the calendar year in which 5,000 kilograms or more of universal waste was accumulated. A handler may re-evaluate his status as a LQHUW in the following calendar year. LQHUWs are subject to certain additional regulatory requirements.

The management requirements proposed today for mercury-containing equipment are generally the same as the existing requirements for mercury-containing thermostats. Under these proposed requirements, management standards for these universal wastes would not significantly differ from the current requirements of 40 CFR part 273. Our proposed definition of mercury-containing equipment was adapted from the regulatory definitions used by States which have added these materials to their universal waste programs.

Following is a more detailed description of today's proposed requirements for mercury-containing equipment.

2. Proposed Requirements for Small and Large Quantity Handlers

Under today's proposal, most of the existing universal waste requirements currently applicable to SQHUWs and LQHUWs would also apply to handlers of mercury-containing equipment. For both SQHUWs and LQHUWs, these requirements include waste management standards, labeling and marking, accumulation time limits, employee training, response to releases, requirements related to off-site shipments, and export requirements. LQHUWs are subject to additional notification and tracking requirements.

The Agency is proposing today to require SQHUWs and LQHUWs to manage mercury-containing equipment in accordance with the universal waste management standards currently in place for used thermostats, because both kinds of devices contain mercury in ampules which are sometimes removed. Today's proposal would require handlers who remove ampules from spent mercury-containing equipment to remove them in accordance with the provisions of 40 CFR 273.13. These provisions state that the ampules must be removed in a manner designed to prevent breakage, and that they must be removed only over or in a containment device. A mercury clean-up system would have to be readily available to immediately transfer any mercury from leaks or spills from broken ampules to a container. Handlers would be required to ventilate and monitor the area in which ampules are removed to ensure compliance with applicable standards of the Occupational Safety and Health Administration (OSHA) for exposure to mercury.

Employees of SQHUWs and LQHUWs would need to be thoroughly familiar with proper waste mercury handling and emergency procedures. They would be required to store removed ampules in closed, non-leaking containers, and pack removed ampules in containers with packing materials adequate to prevent breakage. Handlers who remove mercury-containing ampules would have to determine whether residues from spills or leaks exhibit a characteristic of hazardous waste. They would also be required to make this determination for any other solid waste generated during removal of the ampules. If the residues or other solid waste exhibits a characteristic of hazardous waste, it would have to be managed in accordance with all applicable requirements of 40 CFR parts 260 through 279, rather than as a universal waste.

The notification requirement proposed today for large quantity handlers of universal waste mercury-containing equipment is consistent with the existing notification requirement for LQHUWs of all other universal wastes (40 CFR 273.32). Under today's proposed rule, a large-quantity handler of mercury-containing equipment would be required to notify the Regional Administrator and receive an identification number before meeting or exceeding the accumulation limit. In addition, these handlers would be required to keep records of universal waste shipments received or sent off-site. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping document.

3. Proposed Requirements for Transporters

Under 40 CFR 273.9, the definition of a universal waste transporter is ''a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.'' Persons meeting the definition of universal waste transporter include those persons who transport universal waste from one universal waste handler to another, to a processor, to a destination facility, or to a foreign destination. These persons are subject to the universal waste transporter requirements of subpart D of part 273. The existing provisions apply to transporters of all types of universal waste, and, therefore, they would also apply to transporters of mercury-containing equipment. EPA notes that today's proposed rule would not affect the applicability of shipping requirements under the hazardous materials regulations of the Department of Transportation (DOT). Transporters would continue to be subject to these requirements if applicable (*see* 49 CFR 173.164 (Metallic Mercury and Articles Containing Mercury)).

4. Proposed Requirements for Destination Facilities

Today's notice does not propose to change any existing requirements applicable to destination facilities (subpart E of part 273).

5. Effect of Today's Proposed Rule on Household Wastes and Conditionally-Exempt Small Quantity Generators

Adding mercury-containing equipment to the definition of universal wastes would not substantially change the way households and conditionally-exempt small quantity generators (CESQGs) manage these devices. Household waste continues to be exempt from RCRA Subtitle C regulations under 40 CFR 261.4(b)(1). However, under the universal waste rule, households and CESQGs may voluntarily choose to manage their mercury-containing equipment in accordance with either the CESQG regulations under 40 CFR 261.5 or as universal waste under part 273 (40 CFR 273.8(a)(2)). If CESQG waste or household wastes are mixed with universal waste subject to the requirements of 40 CFR part 273, the comingled waste must be handled as universal waste in accordance with part 273. Under today's rule, such comingled waste would be subject to the 5000 kilogram threshold limit for large quantity handlers.

Hazardous waste mercury-containing equipment that is managed as universal waste under 40 CFR part 273 would not have to be included in a facility's determination of hazardous waste generator status (40 CFR 261.5(c)(6)). Therefore, if a generator were to manage such devices under the universal waste rule and did not generate any other hazardous waste, that generator would not be subject to other Subtitle C hazardous waste management regulations, such as the hazardous waste generator regulations in part 262. A generator that generates more than 100 kilograms of hazardous waste in addition to universal waste mercury-containing equipment would be regulated as a hazardous waste generator and would be required to manage all hazardous wastes not included within the scope of the universal waste rule in accordance with all applicable Subtitle C hazardous waste management standards.

6. Land Disposal Restriction Requirements (LDRs)

Under existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the LDR notification requirements in 40 CFR 268.7 and the storage prohibition in § 268.50. Today's proposal would not change the regulatory status of destination facilities; they would remain subject to the full LDR requirements.

D. Solicitation of Comment on Universal Waste Notification Requirements

EPA is soliciting comment on a proposed change to the notification requirements of the universal waste rule. The current rule (40 CFR 273.32(b)(5)) requires large quantity handlers of universal waste (LQHUWs) to include in the notification sent to the Regional Administrator a statement indicating that the handler is accumulating more than 5,000 kg of universal waste at one time and the types of universal waste (*i.e.,* batteries, pesticides, thermostats, lamps, and mercury-containing equipment) the handler is accumulating above this quantity. The Agency believes that requiring LQHUWs to specify which types of universal waste exceed the 5,000 limit is unnecessary because the regulations already require LQHUWs to provide a list of all the types of universal waste managed by the handler (*see* 40 CFR 273.32(b)(4)). In addition, the requirement appears irrelevant because the 5,000 limit for determining whether a handler is a LQHUW applies to all universal waste accumulated by the handler, not to any particular universal waste. The Agency is therefore

proposing today to delete from 40 CFR 273.32(b)(5) the requirement to notify the Regional Administrator of which particular universal wastes exceed the 5,000 kg. accumulation limit. EPA solicits comment on whether this requirement serves a valid purpose for regulatory authorities, and on whether it is unduly burdensome for LQHUWs.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (*see* also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Today's proposed rule is less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they do not have to adopt the streamlined regulations for CRTs or the universal waste regulations for mercury-containing devices, although EPA encourages them to do so. Some states may already be in the process of streamlining their regulations for these materials or adding them to their list of universal wastes. If a state's standards for used CRTs or mercury-containing equipment are less stringent than those in today's rule, the state will need to amend its regulations to make them equivalent to today's standards and pursue authorization.

C. Interstate Transport

Because some states may choose not to seek authorization for today's proposed rulemaking, there will probably be cases when used CRTs, processed CRT glass, or mercury-containing equipment will be transported through states with different regulations governing these wastes.

First, a waste which is subject to an exclusion from the definition of solid waste or to the universal waste regulations may be sent to a state, or through a state, where it is subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is excluded or is a universal waste, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded or a universal waste, the transporter must have a manifest, and must move the waste in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded or is not a universal waste. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the wastes are covered by an exclusion or under the universal waste regulations in the initiating state but not in the receiving facility's state.

Second, a hazardous waste generated in a state which does not provide an exclusion for the waste or regulate it as a universal waste may be sent to a state where it is excluded or regulated as a universal waste. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not excluded or not a universal waste. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the waste or regulate it as a universal waste would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (*see* 40 CFR 262.23 and 262.42). EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is excluded or covered under the universal waste regulations in the receiving facility's state but not in the generator's state.

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although other portions of the trip may be from, through, and to states in which it is excluded or covered under universal waste regulations. Transport through the State must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of Part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not excluded or is not a universal waste. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As more states streamline their regulatory requirements for these wastes, the complexity of interstate transport will be reduced.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, we completed an economic analyses for this rule. Copies of these analyses (entitled ''Economic Analysis of Cathode Ray Tube Management, Notice of Proposed Rulemaking'' and ''Economic Analysis of Including Mercury-Containing Devices In the Universal Waste System, Notice of Proposed Rulemaking'') have been placed in the RCRA docket for public review. The Agency solicits comment on the methodology and results from the analysis as well as any data that the public feels would be useful in a revised analysis.

1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the affected volume of cathode ray tubes (CRTs) [1] and regulated entities. Because CRTs are often not managed as hazardous wastes but rather along with municipal refuse, the Agency has evaluated two baseline (pre-regulatory) scenarios: (1) A Subtitle C scenario which modeled a distribution of affected monitors as if all affected entities were in compliance with Subtitle C regulation, and (2) a Subtitle D scenario which models a high percentage of CRTs being discarded untreated in municipal solid waste landfills. There is a lower degree of compliance with Subtitle C regulation in the Subtitle D scenario. However, this scenario is being analyzed to evaluate the real-world effect of this rule on affected entities.

The Agency has then modeled two post-regulatory scenarios: (1) The regulation being proposed today (hereafter referred to as the ''primary alternative''), and (2) the Common Sense Initiative recommendation (hereafter referred to as the ''CSI alternative''). The chief differences between the primary alternative and CSI alternative is that the former applies to both glass-to-glass recycling and lead smelters whereas the latter only applies to glass-to-glass recycling. The CSI alternative also includes additional management requirements for CRT handlers. Finally, the CSI alternative envisions streamlined management requirements for monitors but keeping them within RCRA Subtitle C jurisdiction as hazardous waste. By contrast, the primary alternative of today's proposal excludes previously regulated volumes of CRTs from the federal definition of solid and hazardous waste.

In our economic analysis, we have calculated administrative, storage, transportation and disposal/recovery costs for both baseline and post-regulatory scenarios and estimated the net cost savings and economic impacts for each combination of baseline/post-regulatory pair (Subtitle C/primary alternative, Subtitle C/CSI alternative, Subtitle D/primary alternative, Subtitle D/CSI alternative). The Subtitle C/primary alternative pair is the scenario that we are using to meet our administrative requirements following this section. This is so because it is appropriate to use a baseline scenario that reflects compliance with existing federal law and a post-regulatory scenario that is the leading scenario being proposed.

For mercury-containing equipment, we used a similar methodology in our economic analysis to the one we are using for CRTs. Again, because mercury-containing equipment is often managed in municipal solid waste, we have modeled two baselines, one reflecting compliance with Subtitle C management under existing law and the other reflecting ongoing management of a portion of discarded mercury-containing equipment in the municipal solid wastestream.

The benefits from today's proposed rulemaking are presented qualitatively. EPA solicits comment on the need and means to evaluate quantitative benefits from today's rule.

2. Results

a. Volume. Estimated volumes of CRTs subject to RCRA regulation are 16,100 tons of monitors under the Subtitle C baseline. We have estimated the affected volume of CRTs (including both previously regulated and diverted volumes of monitors) under the primary alternative at 17,500 tons and 17,700 under the CSI alternative when paired with the Subtitle C baseline. We believe that between 1500 and 1700 tons of CRTs would be diverted from export or hazardous waste landfill to CRT glass manufacturing under both the primary alternative and the CSI alternative. Estimated volumes of mercury-containing equipment affected by today's rule are 550 tons.

b. Cost/Economic Impact. We estimate that the primary alternative would save CRT handlers $3.5 million per year relative to the Subtitle C baseline. This cost savings comes from reduced administrative, transportation and disposal/management cost. We estimate that CSI alternative would save CRT handlers $1.15 million relative to the Subtitle C baseline, again primarily due to reduced administrative and disposal costs. However, unlike the primary alternative, transportation costs could actually be higher for the CSI alternative because this option does not include lead smelters. Thus, longer transportation distances to glass processors would be required.

To estimate the economic impact of the primary alternative and CSI alternative on CRT handlers, the Agency evaluated the cost savings or incremental costs as a percentage of firm sales. In virtually all cases economic impacts are cost savings at less than one

[1] **Note:** Many CRTs that exhibit the toxicity characteristic for lead are nonetheless not solid wastes that are also hazardous wastes for a number of different reasons. Some are considered household hazardous wastes which are excluded from the federal definition of hazardous wastes. *See* 40 CFR 261.4(b)(1). Other CRTs which are post-manufacturing but not post-consumer are excluded as commercial chemical products being reclaimed. *See* 40 CFR 261.2(c)(3). Thus, the fact that a CRT exhibits the toxicity characteristic for lead is not sufficient in and of itself to know that the monitor is a hazardous waste and affected by this rule.

percent of firm sales. The average savings for a previously regulated small quantity generator is $755 per year and $1740 per year for a previously regulated large quantity generator under the primary alternative. The average cost savings for previously regulated small and large quantity generators under the CSI alternative are estimated at $703 and $7819 respectively.

For mercury-containing equipment, we estimate cost savings resulting from today's proposal would be approximately $273,000 per year. Of this, about $200,000 in savings is attributed to generators of mercury-containing equipment, an average of $106 per generator per year. The remaining $73,000 is attributable to retorters and waste brokers. As with CRTs, the economic impact of these savings relative to firm sales is very small, *i.e.,* less than 0.1 percent of firm sales.

c. Benefits. EPA has evaluated the qualitative benefits and to a lesser extent, the quantitative benefits of the proposed rule for CRTs and mercury-containing equipment. Some of the benefits resulting from today's rule include conservation of landfill capacity, increase in resource efficiency, growth of a recycling infrastructure for CRTs and possible reduction of lead emissions to the environment from CRT recycling. EPA estimates that approximately 2600 tons or 456,000 cubic feet of CRTs per year would be redirected away from landfills towards recycling under the Agency's proposal today. In addition, as mentioned above, the use of processed CRT glass benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or improving the quality of the final product. This rule will facilitate the growth and development of the CRT glass processing industry in the United States by reducing regulatory barriers to new glass processing firms becoming established. Finally, this rule will reduce lead emissions to the environment by diverting CRTs from municipal landfills and waste-to-energy facilities.

B. 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 rule on small entities, small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (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 small entity analysis conducted for today's proposal indicates that streamlining requirements for CRTs and mercury-containing equipment would generally result in savings to affected entities compared to baseline requirements. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs, which are not properly attributable to the current rulemaking, would not be expected to result in significant impacts on a substantial number of small entities.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

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, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared (ICR No. 1189.10) for the proposed CRT requirements, and ICR No. 1597.05 for the proposed requirements for mercury-containing equipment. Copies may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov,* or by calling (202) 260–4901. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's proposed rule, are largely self-implementing. This process will ensure that: (i) Regulated entities managing CRTs or mercury-containing equipment are held accountable to the applicable requirements; and (ii) state inspectors can verify compliance when needed. For example, the universal waste standards require LQHUWs and SQHUWs to demonstrate the length of time that mercury-containing equipment has been accumulated from the date they were received or became a waste. The standards also require LQHUWs and destination sites to keep records of all shipments received and sent. Further, the standards require waste handlers and processors to notify EPA under certain circumstances (e.g, when large amounts are accumulated or when illegal shipments are received).

EPA will use the collected information to ensure that mercury-containing equipment is being managed in a protective manner. These data aid the Agency in tracking waste shipments and identifying improper management practices. In addition, information kept in facility records helps handlers, processors, and destination sites to ensure that they and other facilities are managing these wastes properly. Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality. However, no questions of a sensitive nature are included in any of the information collection requirements associated with today's action.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that used CRTs and mercury-containing equipment are being managed in a manner protective of human health and the environment.

For the proposed requirements applicable to CRTs, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated at 10,426 hours, with a cost of approximately $687,000. Average annual burden hours per respondent are estimated to be 7 hours; there are an estimated 2400 respondents. This represents a reduction in burden to respondents of approximately 18,616. There are no capital or start-up costs,

operation or maintenance costs, and no costs for purchases of services. Nor is there any burden to the Agency. For the proposed requirements affecting mercury-containing equipment, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated at 114,770 hours, with a cost of approximately $825,158. Average annual burden hours per respondent are estimated to be 4.5 hours for small quantity handlers, 15 hours for large quantity handlers, 10 hours for treatment, storage, and disposal facilities, and 16 hours for transporters; there are an estimated 2495 respondents. This represents a reduction in burden of approximately 18,493 hours. The aggregate burden to the Agency is estimated at 377 hours, with a cost of $10,816.00. Total capital costs are estimated to be $1430 annually for all respondents, and operation and maintenance costs are estimated to be $113 annually for all respondents.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for 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 the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (Mail Code 2823), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of 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 June 12, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates

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 the proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable 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 Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's proposed rule imposes no enforceable duty on any state, local or tribal government or the private sector. This proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Act generally excludes from the definition of ''federal intergovernmental mandate'' (in sections 202, 203, and 205) duties that arise from participation in a voluntary federal program. Today's proposed rule is voluntary, and because it is less stringent than the current regulations, state governments are not required to adopt the proposed changes. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. The UMRA also excludes from the definition of ''Federal private sector mandate'' duties that arise from participation in a voluntary federal program. Therefore we have determined that today's proposal is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175

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. This proposed rule 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 Executive Order 13175.

G. Executive Order 13045

''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''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 potential effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

H. Executive Order 13211

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's proposed rule streamlines hazardous waste management requirements for used cathode ray tubes and mercury-containing equipment. By encouraging reuse and recycling, the rule may save energy costs associated with manufacturing new materials. It will not cause reductions in supply or production of oil, fuel, coal, or electricity. Nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. 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, though OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (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, 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). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under this proposed rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's proposed rule would streamline hazardous waste management requirements for used cathode ray tubes sent for recycling. It would also streamline such requirements for mercury-containing equipment by adding this equipment to the federal universal waste rule. Facilities that would be affected by today's rule include any facility generating hazardous waste computers and televisions sent for recycling, and any facility generating hazardous waste mercury-containing equipment sent for recycling or disposal. Also affected would be facilities which recycle these materials. Disposal facilities themselves would not be affected by today's proposed rule.

The wide distribution of affected facilities throughout the United States does not suggest any distributional pattern around communities of concern. Any building in any area could be affected by today's proposal. Specific impacts on low income or minority communities, therefore, are undetermined. The Agency believes that emissions during transportation would not be a major contributor to communities of concern through which used CRTs and mercury-containing equipment may be transported. Any such material broken during transport would be contained in the required packaging. Overall, no disproportional impacts to minority or low income communities are expected.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Waste treatment and disposal.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Hazardous materials, Packaging and containers, Security measures, Surety bonds.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous materials transportation, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: May 17, 2002.

Christine T. Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, parts 260, 261, 264, 265, 268, 270 and 273, are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definitions of ''Cathode ray tube,'' ''CRT glass manufacturing facility,'' ''CRT glass processor,'' and ''Mercury-containing equipment'' and by republishing the introductory text of and adding paragraph (5) to the the definition of ''Universal Waste'' to read as follows:

§ 260.10 Definitions.

* * * * *

Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor. An intact CRT means a CRT remaining within the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released.

* * * * *

CRT glass manufacturing facility means a facility or part of a facility that uses a furnace to manufacture CRT glass.

* * * * *

CRT processing means conducting all of the following activities:

(1) Receiving broken or intact CRTs;

(2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs;

(3) Sorting or otherwise managing glass removed from CRT monitors; and

(4) Cleaning coatings off the glass removed from CRTs.

* * * * *

Mercury-containing equipment means a device or part of a device (excluding batteries, thermostats, and lamps) that contains elemental mercury necessary for its operation.

* * * * *

Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter:

* * * * *

(5) Mercury-containing equipment as described in § 273.6 of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

4. Section 261.4 is amended by adding a new paragraph (a)(23) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(23) Used cathode ray tubes (CRTs)

(i) Used intact CRTs as defined in § 260.10 are not solid wastes unless disposed. No restrictions on speculative accumulation as defined in § 261.1 apply.

(ii) Used, broken CRTs as defined in § 260.10 are not solid wastes provided that they meet the requirements of § 261.39.

* * * * *

5. Section 261.9 is amended by adding a new paragraph (e) to read as follows:

§ 261.9 Requirements for universal waste.

* * * * *

(e) Mercury-conteaining equipment as described in § 273.6 of this chapter.

6. Section 261.38 of subpart D is transferred to Subpart E which is added to read as follows:

Subpart E—Exclusions/Exemptions

Sec.
261.38 Comparable/Syngas Fuel Exclusion.
261.39 Conditional Exclusion for Broken, Used Cathode Ray Tubes (CRTs) Undergoing Recycling.

Subpart E—Exclusions/Exemptions

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

§ 261.39 Conditional Exclusion for Broken, Used Cathode Ray Tubes (CRTs) Undergoing Recycling.

Broken, used CRTs are not solid wastes if they meet the following conditions:

(a) *Prior to processing:* These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) *Storage.* The broken CRTs must be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container (*i.e.,* a package or a vehicle) that is constructed, filled, and closed to minimize identifiable releases to the environment of CRT glass (including fine solid materials).

(2) *Labeling.* Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: ''Waste cathode ray tube(s)—contains leaded glass,'' or ''Used cathode ray tube(s)—contains leaded glass.'' It must also be labeled: ''Do not mix with other glass materials.''

(3) *Transportation.* These CRTs must be transported in a container meeting the requirements of paragraphs(a)(1)(ii) and (2) of this section.

(4) *Speculative accumulation.* These CRTs are subject to the limitations on speculative accumulation as defined in § 261.1.

(b) *Requirements for used CRT processing:* Used, broken CRTs undergoing CRT processing as defined in § 260.10 are not solid wastes if they meet the following requirements:

(1) *Storage.* Broken CRTs undergoing processing are subject to the requirements of paragraphs (a)(1), (2), and (4) of this section.

(2) *Processing.*

(i) All CRTs must be processedwithin a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) *Processed CRT glass sent to CRT glass making or lead smelting:* Glass removed from used CRTs that is destined for recycling at a CRT glass manufacturing facility or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1. Imported, processed glass from used CRTs is subject to these requirements as soon as it enters the United States.

(d) *Processed CRT glass sent to other types of recycling, except for use constituting disposal:* Glass removed from used CRTs that is destined for other types of recycling after processing (except use constituting disposal) is not a solid waste if it meets the requirements of paragraphs (a)(1)–(4) of this section. Imported, processed glass removed from used CRTs is subject to these requirements as soon as it enters the United States.

(e) *Use constituting disposal:* Processed glass removed from CRT monitors that is used in a manner constituting disposal must comply with the requirements of paragraphs (a)(1)–(4) of this section and the applicable

requirements of part 266, subpart C of this chapter. Imported, processed glass from used CRTs is subject to these requirements as soon as it enters the United States.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT STORAGE AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

8. Section 264.1 is amended by adding a new paragraph (g)(11)(v) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(11) * * *

(v) Mercury-containing equipment as described in § 273.6 of this chapter.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

Subpart A—General

10. Section 265.1 is amended by adding a new paragraph (c)(14)(v) to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(14) * * *

(v) Mercury-containing equipment as described in § 273.6 of this chapter.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

11. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

12. Section 268.1 is amended by adding a new paragraph (f)(5) to read as follows:

* * * * *

(5) Mercury-containing equipment as described in § 273.6 of this chapter.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

13. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

14. Section 270.1 is amended by adding a new paragraph (c)(2)(viii)(E) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(viii) * * *

(E) Mercury-containing equipment as described in § 273.6 of this chapter.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

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

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

* * * * *

16. Section 273.1 is amended by adding a new paragraph (a)(5) to read as follows:

§ 273.1 Scope.

(a) * * *

(5) Mercury-containing equipment as described in § 273.6.

* * * * *

17. A new § 273.6 is added to read as follows:

§ 273.6 Applicability—Mercury-containing equipment.

(a) *Mercury-containing equipment covered under this part 273.* The requirements of this part apply to persons managing mercury-containing equipment as described in § 273.9, except those listed in paragraph (b) of this section.

(b) *Mercury-containing equipment not covered under this part 273.* The requirements of this part do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that is not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment becomes a waste.

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter.

(c) *Generation of waste mercury-containing equipment.* (1) Used mercury-containing equipment becomes a waste on the day it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the day the handler decides to discard it.

18. Section 273.9 is amended by adding in alphabetical order the definition of ''Mercury-containing equipment'' and revising the definitions of ''Large quantity handler of universal waste,'' ''Small quantity handler of universal waste,'' and republishing the introductory text of and adding paragraph (5) to the definition of ''Universal waste'' to read as follows:

§ 273.9 Definitions.

* * * * *

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, thermostats, lamps, or mercury-containing equipment, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

* * * * *

Mercury-containing equipment means a device or part of a device (excluding batteries, thermostats, and lamps) that contains elemental mercury necessary for its operation.

* * * * *

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, thermostats, lamps, or mercury-containing equipment, calculated collectively) at any time.

* * * * *

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of this part 273:

* * * * *

(e) Mercury-containing equipment as described in § 273.6.

* * * * *

Subpart B—Standards for Small Quantity Handlers of Universal Waste

19. Section 273.13 is amended by revising paragraph (c) to read as follows:

§ 273.13 Waste management.

* * * * *

(c) *Universal waste thermostats and mercury-containing equipment.* A small quantity handler of universal waste must manage universal waste thermostats and mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must place in a container any universal waste thermostat or mercury-containing equipment that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the thermostat or device, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats or mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device (tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation, and

(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats or mercury-containing equipment must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks, and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (*e.g.,* remaining thermostat units or mercury-containing equipment).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

20. Section 273.14 is amended by adding a new paragraph (f) to read as follows:

§ 273.14 Labeling/marking.

* * * * *

(f) Mercury-containing equipment, or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury-Containing Equipment,'' or ''Waste Mercury-Containing Equipment,'' or ''Used Mercury-Containing Equipment.''

Subpart C—Standards for Large Quantity Handlers of Universal Waste

21. Section 273.32 is amended by revising paragraphs (b)(4) and (b)(5) to read as follows:

§ 273.32 Notification.

* * * * *

(b) * * *

(4) A list of all the types of universal waste managed by the handler (*e.g.,* batteries, pesticides, thermostats, lamps, and mercury-containing equipment);

(5) A statement indicating that the handler is accumulating more than 5,000 kg of universal waste at one time and the types of universal waste (*i.e.,* batteries, pesticides, thermostats, lamps, and mercury-containing equipment) the handler is accumulating above this quantity.

22. Section 273.33 is amended by revising paragraph (c) to read as follows:

§ 273.33 Waste management.

* * * * *

(c) *Universal waste thermostats and mercury-containing equipment.* A large quantity handler of universal waste must manage universal waste thermostats and mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste thermostat or mercury-containing equipment that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat and/or equipment, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats or mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device (tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation, and

(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats or mercury-containing equipment must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks, and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (*e.g.,* remaining thermostat units or mercury-containing equipment).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

* * * * *

23. Section 273.34 is amended by adding a new paragraph (f) to read as follows:

§ 273.34 Labeling/marking.

* * * * *

(f) Mercury-containing equipment, or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury-Containing Equipment,'' or ''Waste Mercury-Containing Equipment,'' or ''Used Mercury-Containing Equipment.''

[FR Doc. 02–13116 Filed 6–11–02; 8:45 am]

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Wednesday,
June 12, 2002

Part V

Department of Health and Human Services

Office of Community Services

Request for Applications Under the Office of Community Services' Fiscal Year 2002 Rural Community Development Activities Program (RF PROGRAM); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–2002–07]

Request for Applications Under the Office of Community Services' Fiscal Year 2002 Rural Community Development Activities Program (RF PROGRAM)

AGENCY: Office of Community Services (OCS), Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Rural Community Development Activities Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 680(a)(3)(A) and (B) of the Community Services Block Grant Act, as amended 42 U.S.C. 9921. This announcement contains forms and instructions for submitting an application.

Awards will be contingent on the outcome of the competition and the availability of funds. This announcement is inviting applications for a 12-month budget period and a 36-month project period.

DATES: To be considered for funding applications must be received on or before July 29, 2002. Mail service in the Washington, D.C. area was disrupted a few months ago and for several weeks, all mail deliveries to the Administration for Children and Families stopped. Regular deliveries have resumed, but delays continue due to the irradiation process. It may be some time before the situation corrects itself. Consequently, it is strongly recommended that applicants avail themselves of overnight/express delivery such as Federal Express or United Parcel Service to submit their applications. Applications received after the due date will not be accepted for consideration for funding. Note that an overnight/express service should be addressed to the Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ''Attention RF Program,'' 901 D Street, SW, Fourth Floor West, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Veronica Terrell (202) 401–5295, *vterrell@acf.dhhs.gov,* or Richard Saul (202) 401–9341, *rsaul@acf.dhhs.gov,* Department of Health and Human Services, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447. In addition, this Announcement is accessible on the OCS Web site for reading and downloading at: *http://www.acf.dhhs.gov/programs/ocs*—double click on ''Funding Opportunities.''

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.570. The title is Rural Community Development Activities Program (RF Program).

Paperwork Reduction Act of 1995

All information collections within this Program Announcement are approved under the following currently valid OMB control number 0970–0139 which expires 12/31/2003.

SUPPLEMENTARY INFORMATION: This Program Announcement consists of seven parts plus Attachments.

Part I: Background Information

Legislative authority, program purpose, project goals, definition of terms, and program evaluation.

Part II: Program Objectives and Requirements

Program priority areas, eligible applicants, project and budget periods, and funds availability and grant amounts.

Part III: The Project Description, Program Proposal Elements and Review Criteria

Project description, project summary/abstract; objectives and need for assistance; results or benefits expected; approach, organizational profiles; budget and budget justification, indirect costs, program income, non-federal resources; and review criteria.

Part IV: Application Procedures

Application development and availability of forms, application submission, paperwork reduction act of 1995, intergovernmental review, initial OCS screening, consideration of applications and evaluation criteria.

Part V: Instructions for Completing Application Forms

SF424, SF424A, SF424B.

Part VI: Contents of Application and Receipt Process

Content and order of RF program application and acknowledgment of receipt.

Part VII: Post Award Information and Reporting Requirements

Notification of grant award, attendance at technical assistance and evaluation workshops/conferences, reporting requirements, audit requirements, prohibitions and requirements with regard to lobbying and applicable Federal regulations.

Attachments

Application forms and required attachments.

Part I. Background Information

A. Legislative Authority

The Community Services Block Grant Act, as amended; Sections 680(a)(3)(A) and (B) of the Community Opportunities, Accountability, and Training and Educational Services (COATES) Act of 1998, authorizes the Secretary to provide ''assistance for rural community development activities, which shall include providing—

(A) Grants to private nonprofit corporations to enable the corporations to provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units; and

(B) Making grants to multi-state, regional, private, nonprofit organizations to enable the organizations to provide training and technical assistance to small rural communities concerning meeting their community facility needs.''

B. Program Purpose

The purpose of the program to be funded under this Announcement is to provide assistance under section 680(a)(3)(A) and (B) of the COATES Act, in the form of grants to private nonprofit corporations to enable the corporations to provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental units; and make grants to multi-state, regional, private, nonprofit organizations to provide training and technical assistance to small, rural communities concerning meeting their community facility needs. Also, faith-based organizations are eligible to apply.

C. Project Goals

The ultimate goals of the projects to be funded under this program are:

(1) To provide training and technical assistance in developing and managing community facilities in rural areas, that will help low-income rural communities develop the capability and expertise to establish and/or maintain needed community facilities, which may include: (a) Affordable, adequate, and safe water and waste water treatment facilities; (b) locally owned and controlled transportation systems necessary for access to, and delivery of, essential community health and human services and access to employment and education; and (c) locally owned and

controlled dispersed, renewable, safe reliable and affordable energy development and distribution systems;

(2) To improve the coordination of Federal, state and local agencies' funding resources to assist with: (a) Home repair to rural low-income families and developing low-income rural rental housing units; (b) water and waste water management; (c) transportation issues; and (d) dispersed renewable energy development;

(3) To provide data and information needed for the evaluation of the projects to demonstrate the effectiveness of these activities and interventions and of the project designs through which they were implemented; and to cooperate with the third-party entity carrying out evaluation of the program; and

(4) To distribute information to low-income rural communities on available Federal assistance to support these activities and contribute to developing and sustaining healthy rural communities.

D. Definition of Terms

For the purposes of this announcement:

(1) Budget period: The time intervals into which a project period is divided for budgetary and funding purposes.

(2) Cash contributions: The cash outlay including the money contributed to the project or program by the recipient and third parties.

(3) Community economic development (CED): A process by which a community uses resources to attract capital and increase physical, commercial, and business development and job opportunities for its residents.

(4) Distressed community: An urban neighborhood or rural community of high unemployment and pervasive poverty.

(5) Eligible applicant: A private nonprofit corporation that can provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units and multi-state, regional, private, non-profit organization that can provide training and technical assistance to small, rural communities concerning their community facility needs. Faith-based organizations that meet the above requirements are eligible to apply for these grants.

(6) Empowerment Zones and Enterprise Communities (EZ/EC): Those communities designated as such by the Secretaries of Agriculture or Housing and Urban Development.

(7) Faith-Based Organizations: Faith-Based organizations that are exempt from taxation under 501(1) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code and private, nonprofit corporations or organizations are also eligible to apply for funds under this program announcement.

(8) Indian tribe: An Indian tribe or an Indian Tribal organization that is a private, nonprofit corporation or organization.

(9) Job Placement: Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

(10) Poverty Income Guidelines: Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families.

(11) Program Income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

(12) Project Period: The total time for which a project is approved for OCS support, including any approved extensions. If for more than 17 months, it is frequently divided into ''budget periods'' of 17 months or less duration for which individual grant actions are made (see ''Budget period'').

(13) Renewable Energy: Energy derived from solar, biomass, wind, geothermal, and small-scale/low-head hydro electricity generation.

(14) Rural Community: A community or defined rural area with a population under 10,000, although most activities of the Rural Community Assistance Program are carried out in rural areas with populations of 2,000 or less.

(15) Secretary: The Secretary of Health and Human Services, acting through the Director of the Office of Community Services.

(16) Self-sufficiency: A condition where an individual or family neither needs nor is eligible for public assistance.

(17) Technical Assistance: A problem-solving event intervention utilizing the services of an expert. Such services may be provided on-site, by telephone, or by other communications. These services address specific problems and are intended to assist in immediately resolving a given problem or set of problems.

(18) Temporary Assistance for Needy Families (TANF): Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) created the TANF program that transformed welfare into a system that requires work in exchange for time-limited assistance. The law specifically eliminated any individual entitlement to, or guarantee of assistance, repealed the Aid to Families with Dependent Children (AFDC) program, Emergency Assistance (EA), and Job Opportunities and Basic Skills Training (JOBS) programs, and replaced them with a Block grant entitlement to States under Title IV of the Social Security Act.

(19) Third Party: Any individual, organization, or business entity that is not the direct recipient of grant funds.

(20) Third Party In-Kind Contributions: The value of non-cash contributions provided by non-federal third parties in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefitting and specifically identifiable to the project or programs.

A. Program Evaluation

Pursuant to the requirements of section 680(b) of the COATES Act, OCS will provide funds to an independent third party research organization to evaluate the effectiveness of the programs and services carried out by the grantees funded pursuant to this announcement, individually and as an overall strategy for improving the quality of life and economic well being of residents in small rural communities, particularly as they affect low-income residents of those communities and contribute to developing and sustaining healthy rural communities.

Pursuant to that requirement, approximately $400,000 in FY 2002 funds will be made available for developing an evaluation design and the initial stage of its implementation.

Applicants requesting funding under this Announcement are required to include as part of their proposals a signed, written commitment to cooperate with this evaluation, and to provide to the organization carrying out the evaluation the necessary data and information.

Part II. Program Objectives and Requirements.

OCS invites private nonprofit corporations and multi-state, regional, private, nonprofit organizations to submit competing grant applications for new discretionary projects that provide training and technical assistance to small rural communities concerning their community facilities as described in Part I Section C. Project Goals, above.

A. Program Priority Areas

There are two Program Priority Areas under this announcement. Under Program Priority Area 1.0–OCS is requesting applications from private nonprofit corporations for home repair

and developing low-income rural rental housing. Under Program Priority Area 2.0–OCS is requesting applications multi-state, regional, private, nonprofit organizations for training and technical assistance to meet community facility needs.

B. Eligible Applicants

Eligible applicants include private nonprofit corporations that can provide assistance concerning home repair to rural low-income families and concerning planning and developing low-income rural rental housing units. Also, multi-state, regional, private, non-profit organizations that can provide training and technical assistance to small, rural communities concerning their community facility needs are eligible to apply. Faith-based organizations that meet the above requirements are eligible to apply for these grants. Any non-profit organization applying must provide proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or, a copy of the currently valid IRS tax exemption certificate, or, a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

C. Project and Budget Periods

This announcement invites applications for project period up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding will be in the best interest of the Government.

D. Funds Availability and Grant Amounts

All awards are subject to the availability of appropriated funds. Approximately $6,572,471 is expected to be available for grants for FY 2002. In FY 2002 OCS is requesting applications for grants not to exceed $1,000,000, under Priority Areas 1.0 and 2.0. As noted above in PART I, Section E, Program Evaluation, approximately $400,000 will be made available to cover the cost of an evaluation of the program, as required by section 680(b) of the COATES Act.

For Fiscal Years 2003–2004, OCS anticipates, subject to the availability of funds, that non-competing continuation grants will be made under this program.

Part III. The Project Description, Program Proposal Elements and Review Criteria

A. Project Description

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise, complete, and address the activity for which Federal funds are being requested. Supporting documents should present information clearly and succinctly. Applicants are required to provide information on their organizational structure, staff, related experience, and other relevant information. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, to include this information in the application. However, in the narrative, the applicant must distinguish resources directly related to the proposed project from those that will not be used specifically to support the project for which funds are requested.

B. Project Summary/Abstract

Provide a summary project description (a page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Demographic data and participant/beneficiary information, should be incorporated as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived.

E. Approach

Outline a plan of action describing the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Organization Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation as appropriate, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization applying must provide proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or, a copy of the currently valid IRS tax exemption certificate, or, a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information

form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculations to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification describing how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and the narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal (where the authorizing statute permits) and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. **Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition, and must comply with provisions of 45 CFR Part 74. Recipients and sub recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

H. Indirect Costs

Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the appropriate agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that

the applicant is accepting a lower rate than allowed.

I. Program Income

The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

J. Non-Federal Resources]

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

K. Review Criteria and Program Proposal Elements—listed according to UPD priority order

Review Criteria 1: Organizational Profiles

Element I—Organizational Experience in Program Area and Staff Responsibilities (Maximum: 30 points)

A. Organizational Experience in Program Area (sub-rating: 0–15 points)

Documentation provided indicates that previous projects were relevant and effective and provided permanent benefits to the low-income population.

Organizations that propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

B. Staff Skills, Resources and Responsibilities (sub-rating 0–15 points)

The application describes in brief resume form the experience and skills of the Project Director who is not only well qualified, but possesses professional capabilities relevant to successfully implementing the project. If the key staff person has not yet been identified, the application contains a comprehensive position description indicating the relevance of the responsibilities to be assigned to the Project Director to the successfully implementing the project. The applicant has adequate facilities and resources (i.e., space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost-effective management of the project.

Review Criteria 2: Objectives and Need for Assistance

Element II—Analysis of Need (Maximum: 15 points)

The application must precisely identify the target population(s) and/or communities to be served. The geographic area to be impacted should then be briefly described, citing the percentage of low-income residents and/or communities that will be impacted and providing any other data relevant to the project design. The applicant should describe the needs of the communities and how they plan to address the these needs in each relevant area of activity—housing, water, transportation, and distributed energy.

Review Criteria 3: Approach

Element III—Approach 1—Project Implementation (Maximum: 20 points)

The Work Plan is both sound and feasible. The project responds to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets for task completion. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

Element IV—Approach 2—Public Private Partnerships (Maximum: 10 Points)

The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions. Applicants documenting that the fair value of such contributions will at least equal the OCS funds requested will receive the maximum number of points for this Element. Applications proposing to mobilize contributions that are valued less than the total amount of Federal grant funds requested will receive prorated points in this element.

Element V—Budget Appropriateness and Reasonableness (Maximum: 5 Points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a narrative detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Review Criteria VI—Cooperation With Project Evaluation (Maximum: 5 Points)

The applicant should provide a well thought through outline of a plan for collecting, validating and reporting or providing data concerning its activities, services and constituent services to recipients. The applicant must indicate its willingness to cooperate with the organization developing the national evaluation design in identifying performance goals and measures. As noted in Part I above, to be considered for funding the applicant must provide a signed statement agreeing to cooperate with the organization evaluating the national program by providing the data and information necessary for carrying out the evaluation.

Review Criteria 3: Results or Benefits Expected

Element I—Significant and Beneficial Impact (Maximum: 15 Points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and significantly enhance the health of the communities served and the well-being of their residents. Results are quantifiable in terms of program area expectations, for example, number of water systems or waste water treatment facilities begun, in construction, or completed; measurable improvement in water quality and health of watershed; amount of resources successfully mobilized for facilities improvement; and number of transportation or energy facilities established or under development. The OCS grant funds, in combination with private and/or other public resources, are targeted into rural low-income and/or distressed rural communities and/or designated empowerment zones and enterprise communities and the new ''Renewal Communities'' (second round of empowerment zones grants awarded).

Part IV. Application Procedures

A. Application Development and Availability of Forms

To be considered for a grant under this Program Announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the Review Criteria and Program Proposal Elements set out in Part III K, above. It must be submitted on the forms supplied in the attachments to this

Announcement and in the manner prescribed below. Attachments B through K contain all of the standard forms necessary to applying for awards under this OCS program. These attachments and Parts IV and V of this announcement contain all the instructions required for submitting applications.

Additional copies of the Program Announcement may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT:** at the beginning of this Announcement. In addition, this Announcement is accessible for reading or downloading on the Internet through the OCS Website at: *www.acf.dhhs.gov/programs/ocs* double click on ''Funding Opportunities''.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning drug-free workplace, the Certification Regarding Environmental Tobacco Smoke, and debarment regulations set forth in Attachments E, I and F.

Part III contains instructions for the substance and development of the project narrative. PART V contains instructions for completing application forms. Part VI, Section A, describes the contents and format of the application as a whole.

B. Application Submission

(1) Number of Copies Required. Applicants must submit the original and two copies of any applications unless additional copies are required pursuant to 45 CFR part 1320.

(2) Deadline. To be considered for funding applications must be *received* on or before July 29, 2002. Applicants must make sure that the applications are submitted by the Closing Date mentioned in the beginning of the announcement under ''Closing Date.'' Mail service in the Washington, D.C. area was disrupted a few months ago and for several weeks, all mail deliveries to the Administration for Children and Families stopped. Regular deliveries have resumed, but delays continue due to the irradiation process. It may be some time before the situation corrects itself. Consequently, it is strongly recommended that applicants avail themselves of overnight/express delivery such as Federal Express or United Parcel Service to submit their applications. Applications received after the due date will not be accepted for consideration for funding.

As previously, noted applications submitted via overnight/express delivery services should be addressed to the Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ''Attention RF Program'', 901 D Street SW., Fourth Floor West, Washington, DC 20024.

Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ''Attention: RF Program'', 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: RF Program''.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

(3) Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

(4) Extension of deadlines. ACF may extend application deadlines when circumstances such as acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with ACF's Chief Grants Management Officer. A decision to extend an application deadline, extends the deadline for all applicants.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control number 0970–0139 which expires 12/31/2003.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of 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.

D. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

*All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate ''not applicable'' if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which

may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th floor East, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment J to is Announcement.

E. Initial OCS Screening

Each application submitted under this Program Announcement will undergo a pre-review to determine that the application was postmarked by the closing date and submitted in accordance with the instructions in this Announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all Applicants except as noted:

(1) The application must contain a signed Standard Form 424 ''Application for Federal Assistance'' (SF–424), a budget (SF–424A), and signed ''Assurances'' (SF 424B) completed according to instructions published in Part V and Attachments B and D of this Program Announcement. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 letter-size pages, numbered consecutively, and typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (c.p.i.) or equivalent. Applications with project narratives (excluding Project Summaries and appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding.

(3) Application must contain documentation of the applicant's non-profit status as required under PART II, Section B.

F. Consideration of Application

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of the specific review criteria described and discussed in Part III, above. Applications will be reviewed and rated under the Program Elements and Review Criteria set forth in PART III Section I. The review criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The review criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the review criteria and program elements within the context of this Program Announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration, including, but not limited to, the timely and proper completion by applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested, the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

Since non-Federal reviewers will be used for review of applications, applicants may omit from the application copies which will be made available to the non-Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

Evaluation Criteria

Proposal Elements and Review Criteria for Applications under Priority Area 1.0

Each application which passes the initial screening will be assessed and scored by three independent reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

Part V. Instructions for Completing Application Forms

The standard forms attached to this Announcement shall be used to apply for funds under this Program Announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B and C) as modified by the instructions set forth in PART III G., above, and the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. (Note: The Budget detail and Narrative Budget Justification should follow the SF 424 and 424A, and are not counted as part of the Project Narrative.)

A. SF–424—Application for Federal Assistance (Attachment B)

Top of Page

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand

corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant is a State, enter ''A'' in the box. If applicant is an Indian Tribe enter ''K'' in the box. If applicant is a non-profit organization enter ''N'' in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is ''Rural Community Development Activities Program'' (RF Program).

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested.

Item 13. Proposed Project—The project start date must begin on or before September 30, 2002; the ending date should be calculated on the basis of 36-month Project Period.

Item 15a. This amount should be no greater than $1,000,000 under Priority Area 1.0 and 2.0.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the Project Period (36 months).

B. SF–424A—Budget Information—Non-Construction Programs (Attachment C)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, local, and other. Federal funds (only if statutory authority permits) other than requested OCS funding should be included in *Non-Federal* entries. Sections A, B, and C of SF–424A should reflect budget estimates for each year of the Project Period.

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts) Col. (a): Enter ''RF Program'' as Item number 1. (Items 2, 3, 4, and 5 should be left blank.) Col. (b): Catalog of Federal Domestic Assistance number is 93.570. Col. (c) and (d): not relevant to this program. Column (e)–(g): enter the appropriate amounts in items 1. and 5. (Totals) Column e should not be more than $1,000,000 under Priority Area 1.0 and 2.0.

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form in Attachment C)

Columns (1)–(5): For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the full 1-year budget period.

Columns 2, 3 and 4 are not relevant to this program.

Column 5: Enter the Total

Section C—Non Federal Resources

This section is to record the amounts of ''non-Federal'' resources that will be used to support the project, including any ''additional resources'' which will bring additional support to the project, which may be cash or in-kind, non-Federal or Federal. In this context, ''Non-Federal'' resources mean any and all resources other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal (only if statutory authority permits) programs, should be entered on these lines. Provide a brief listing of these ''non-Federal'' resources on a separate sheet and describe whether it is a grantee cost or a third-party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Public-Private Partnerships program element.

Sections D, E, and F may be left blank by Applicants under Priority Area 1.0 and 2.0. As noted in Part VI, a supporting Budget Justification must be submitted providing details of expenditures under each budget category, with justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project.

C. SF–424B Assurances: Non-Construction Programs

Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' (Attachment D) Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. (See Attachments G and H)

Applicants must sign and return the certification with their applications. Applicants should note that the Lobbying Disclosure Act of 1995 has simplified the lobbying information required to be disclosed under 31 U.S.C. 1352.

Applicants must make the appropriate certification on their compliance with the Drug-Free Workplace Act of 1988 and the Pro-Children Act of 1994 (Certification Regarding Smoke Free Environment). (See Attachments E and I) By signing and submitting the applications, applicants are attesting to their intent to comply with these requirements and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. (See Attachment F) By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Copies of the certifications and assurances are located at the end of this announcement.

Part VI. Contents of Application and Receipt Process

Application pages should be numbered sequentially throughout the application package, beginning with a Summary/Abstract of the proposed project as page number one; and each application must include all of the following, in the order listed below:

A. Content and Order of RF Program Application

1. A Project Summary/Abstract—brief, not to exceed one page, on the Applicant's letterhead (that will not be counted as a part of the Project Narrative/Description) and that includes the following information:

2. Table of Contents;

3. A completed Standard Form 424 (Attachment B) which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally; [**Note:** The original SF–424 must bear the original signature of the authorizing representative of the applicant organization];

4. A completed Budget Information-Non-Construction Programs (SF–424A) (Attachment C);

5. A Budget Justification, including narrative budget justification for each object class category included under Section B, as described in PART III, Program Element III;

6. Proof of current non-profit status of Applicant (See PART IV, Section D, paragraph (3);

7. *A project narrative,* limited to 30 pages as specified above in Part IV, Section D, paragraph (2) which includes all of the required elements described in Part III. [Specific information/data required under each component is described in Part III Section I, Evaluation Criteria.]

8. *Appendices,* which should include the following: (a) Filled out, signed and dated *Assurances—Non-Construction*

Programs (SF–424B), (Attachment C); (b) *Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities:* filled out, signed and dated form found at Attachment G;

(c) *Disclosure of Lobbying Activities, SF–LLL:* Filled out, signed and dated form found at Attachment H, if appropriate (omit Items 11–15 on the SF LLL and ignore references to continuation sheet SF–LLL–A)

(d) Resumes and/or position descriptions (see Part III Program Element I);

(e) Any letters and/or supporting documents from collaborating or partnering agencies in target communities, providing additional information on staffing and experience in support of narrative under PART III Element I. [Such documents are not part of the Narrative and should be included in the Appendices. These documents are therefore not counted against the page limitations of the Narrative.]; and (f) Single points of contact comments, if applicable.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only (See PART IV D. (2), above, concerning margins, type size, etc). They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound applications, or applications enclosed in binders is specifically discouraged.

B. Acknowledgment of Receipt

Acknowledgment of Receipt—All applicants will receive an acknowledgment with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgment. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5307 or 5295.

Part VII. Post Award Information and Reporting Requirements

A. *Notification of Grant Award.* Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

For Fiscal Years 2003–2004 the grantee will be notified of the requirements for submission of the continuation application by February of the pertinent fiscal year.

B. *Attendance at Technical Assistance and Evaluation Workshops/Conferences.* OCS hopes to sponsor at least one national evaluation workshop in Washington, DC or in other locations, if necessary during the course of the project period. Project Directors will be expected to attend such workshops and should include the expenses of attending as a part of your original budget request.

C. *Reporting Requirements.* Grantees will be required to submit a semi-annual program progress and financial report (SF 269) throughout the project period, as well as a final program and financial report 90 days after the end of the project period. Program progress and financial reports are due 30 days after the reporting period.

D. *Audit Requirements.* Grantees are subject to the audit requirements in 45 CFR Part 74 (non-profit organizations) or Part 92 (governmental entities) which require audits under OMB Circular A–133.

E. *Prohibitions and Requirements with regard to Lobbying.* Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment G and H for certification and disclosure forms to be submitted with the applications for this program.

F. *Applicable Federal Regulations.* Attachment K indicates the regulations which apply to all applicants/grantees under the Rural Community Assistance Program.

Dated: May 23, 2002.

Robert Mott,

Deputy Director, Office of Community Services.

List of Attachments

A. Income Poverty Guidelines
B. Application for Federal Assistance (SF–424)
C. Budget Information—Non Construction Programs (SF–424A)
D. Assurances—Non Construction Programs (SF–424B)
E. Certification Regarding Drug-Free Workplace Requirements
F. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
G. Certification Regarding Lobbying
H. Disclosure of Lobbying Activities
I. Certification Regarding Environmental Tobacco Smoke
J. Single Points of Contact Listing
K. Applicable Federal Regulations

ATTACHMENT A

Size of family unit	Poverty guideline
2002 Poverty Guidelines for the 48 Contiguous States and the District of Columbia	
1	$8,860
2	11,940
3	15,020
4	18,100
5	21,180
6	24,260
7	27,340
8 [1]	30,420
2002 Poverty Guidelines for Alaska [2]	
1	11,080
2	14,930

ATTACHMENT A—Continued

Size of family unit	Poverty guideline
3	18,780
4	22,630
5	26,480
6	30,330
7	34,180
8	38.030
2002 Poverty Guidelines for Hawaii	
1	10,200
2	13,740
3	17,280
4	20,820
5	24,360
6	27,900
7	31,440

ATTACHMENT A—Continued

Size of family unit	Poverty guideline
8 [3]	34,980

[1] For family units with more than 8 members, add $3,080 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

[2] For family units with more than 8 members, add $3,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

[3] For family units with more than 8 members, add $3,540 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

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Attachment B - Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other *(Specify)*: _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award. B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED STATE FOR REVIEW

17. IS APPLICATION DELINQUENT ON ANY FEDERAL DEBT?

☐ YES If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office Of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the office of management and budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Data application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —''New'' means a new assistance award.
   - —''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
   - —''Revision'' means any change in the Federal Governments financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory
14. List the applicant's Congressional District and District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C - Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

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Attachment C - Page 2

SECTION C - NON-FEDERAL RESOURCES

	(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.		$	$	$	$
9.					
10.					
11.					
12. TOTAL *(sum of lines 8-11)*		$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

BILLING CODE 4184–01–C

INSTRUCTIONS FOR THE SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office Of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the office of management and budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections, A, B, C and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4.

Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in column (e) the amount of the increase or decrease of Federal Funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column heading (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–1—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of columns (b)—(e). the amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in column in (a), Section A. A breakdown by function or activity is not necessary. for new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standard or agency directives.

3. Will establish safeguards to prohibit employees form using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standard for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statues relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794), which prohibits discriminatiion on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended 42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act 940 U.S.C. §§ 276a to 276a–7), the Copeland Act 940 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. WIll comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetland pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program development under the Costal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. § § 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official __
Title _____
Applicant Organization _____
Date Submitted _____

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Divisions of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department

while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction,

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report

caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''subawardee'', then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 [e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency]. Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Disclosure of Lobbying Activities
Continuation Sheet

Reporting Entity: _____
Page _____

_____

Page _____ of _____

BILLING CODE 4184–01–M

Attachment H

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: Year _____ Quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a.)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal use only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Intergovernmental Review (SPOC List)

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372. ''Intergovernmental Review of Federal Programs,'' was issued

with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below.

States that are not listed on this page chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Contact information for Federal agencies that award grants can be found in Appendix IV of the Catalog of Federal Domestic Assistance.

Arkansas

Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
Fax: (501) 682–5206
tlcopeland@dfa.state.ar.us

California

Grants Coordination
State Clearinghouse
Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, California 95812–3044
Telephone: (916) 445–0613
Fax: (916) 323–3018
state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins
Executive Department
Office of the Budget
540 S. Dupont Highway, 3rd Floor
Dover, Delaware 19901
Telephone: (302) 739–3323
Fax: (302) 739–5661
chopkins@state.de.us

District of Columbia

Luisa Montero-Diaz
Office of Partnerships and Grants Development
Executive Office of the Mayor
District of Columbia Government
441 4th Street, NW., Suite 530 South
Washington, DC 20001
Telephone: (202) 727–8900
Fax: (202) 727–1652
opgd.eom@dc.gov

Florida

Jasmin Raffington
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
Fax: (850) 414–0479
clearinghouse@dca.state.fl.us

Georgia

Georgia State Clearinghouse
270 Washington Street, SW
Stalanta, Georgia 30334
Telephone: (404) 656–3855
Fax: (404) 656–7901
gach@mail.opb.state.ga.us

Illinois

Virginia Bova
Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
Fax: (312) 814–8485
vbova@commerce.state.il.us

Iowa

Steven R. McCann
Division of Community and Rural Development
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
Fax: (515) 242–4809
steve.mccann@ided.state.ia.us

Kentucky

Ron Cook
Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Telephone: (502) 573–2382
Fax: (502) 573–2512
ron.cook@mail.state.ky.us

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287–3261
(207) 287–1461 (direct)
Fax: (207) 287–6489
joyce.benson@state.me.us

Maryland

Linda Janey
Manager, Clearinghouse and Plan Review Unit
Maryland Office of Planning
301 West Preston Street—Room 1104
Baltimore, Maryland 21201–2305
Telephone: (410) 767–4490
Fax: (410) 767–4480
linda@mail.op.state.md.us

Michigan

Richard Pfaff
Southeast Michigan Council of Governments
535 Griswold, Suite 300
Detroit, Michigan 48226
Telephone: (313) 961–4266
Fax: (313) 961–4869
pfaff@semcog.org

Nevada

Heather Elliott
Department of Administration
State Clearinghouse
209 E. Musser Street, Room 200
Carson City, Nevada 89701
Telephone: (775) 684–0209
Fax: (775) 684–0260
helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor
Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271–2155
Fax: (603) 271–1728
jtaylor@osp.state.nh.us

New Mexico

Ken Hughes
Local Governmental Division
Room 201 Bataan Memorial Building
Sante Fe, New Mexico 87503
Telephone: (505) 827–4370
Fax: (505) 827–4948
khughes@dfa.state.nm.us

North Carolina

Jeanette Furney
Department of Administration
1302 Mail Service Center
Raleigh, North Carolina 27699–1302
Telephone: (919) 807–2323
Fax: (919) 733–9571
jeanette.furney@ncmail.net

North Dakota

Jim Boyd
Division of Community Services
600 East Boulevard Ave, Dept 105
Bismarck, North Dakota 58505–0170
Telephone: (701) 328–2094
Fax: (701) 328–2308
jboyd@state.nd.us

Rhode Island

Kevin Nelson
Department of Administration
Statewide Planning Program
One Capitol Hill
Providence, Rhode Island 02908–5870
Telephone: (401) 222–2093
Fax: (401) 222–2083
knelson@doa.state.ri.us

South Carolina

Omeagia Burgess
Budget and Control Board
Office of State Budget
1122 Ladies Street, 12th Floor
Columbia, South Carolina 29201
Telephone: (803) 734–0494
Fax: (803) 734–0645
aburgess@budget.state.sc.us

Texas

Denise S. Francis
Director, State Grants Team
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 305–9415
Fax: (512) 936–2681
dfrancis@governor.state.tx.us

Utah

Carolyn Wright
Utah State Clearinghouse
Governor's Office of Planning and Budget
State Capitol, Room 114
Salt Lake City, Utah 84114
Telephone: (801) 538–1535
Fax: (801) 538–1547

cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director
Community Development Division
West Virginia Development Office
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Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

Please note: Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown above. The best source for this information is the CFDA.

Attachment K

Department of Health and Human Services (DHHS)

Regulations Applying to All Applicants/Grantees Under

Rural Community Development Activities Program (RF PROGRAM)

Title 45 of the Code of Federal Regulations

Part 16—DHHS Grant Appeals Process
Part 74—Administration of Grants (grants with subgrants to entities1)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility For Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by Department of Health and Human Services
Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register,** March 11, 1988)
Part 93—New Restrictions on Lobbying
OMB Circular A–122—Cost Principles for Non-Profits

[FR Doc. 02–14713 Filed 6–11–02; 8:45 am]

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Federal Register

Wednesday,
June 12, 2002

Part VI

Environmental Protection Agency

Standards for the Use or Disposal of Sewage Sludge; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7228–9]

STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) proposed to amend the Standards for the Use or Disposal of Sewage Sludge to limit dioxin and dioxin-like compounds (''dioxins'') in sewage sludge that is applied to the land on December 23, 1999. Since that time, EPA collected new data on the levels of dioxins in sewage sludge. EPA also has extensively revised the risk assessment which estimates the risks from dioxin and dioxin-like compounds associated with land application of sewage sludge. This document summarizes the new sewage sludge data and risk assessment. In addition, EPA is inviting comment on the effect of applying approaches in EPA's current Draft Dioxin Reassessment concerning non-cancer health effects of exposure to dioxins as they relate to land application of sewage sludge. EPA also conducted a screening analysis of the effects of dioxins in land-applied sewage sludge on ecological species, which is addressed in this notice. EPA is requesting comments on the new data and risk analysis, as well as dioxin exposure information, and any impact that this may have on the proposed rule with respect to land application of sewage sludge.

EPA is under a court-ordered deadline to take final action on the proposed land application rule. The deadline was recently extended to October 17, 2003 with respect to land application; EPA met the previous court-ordered deadline of December 15, 2001 for taking final action on the Round Two proposal concerning surface disposal and incineration in a sewage sludge incinerator. EPA gave final notice of its determination that numeric standards or management practices are not warranted for dioxin and dioxin-like compounds in sewage sludge that is disposed of in a surface disposal site or incinerated in a sewage sludge incinerator (66 FR 66228, Dec. 21, 2001).

DATES: Your comments on this document must be submitted to EPA in writing and must be received or postmarked on or before midnight September 10, 2002.

ADDRESSES: Written comments and enclosures should be mailed or hand-delivered to: W–99–18 NODA Comment Clerk, Water Docket (MC–4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA's Water Docket (MC 4101) at 401 M St., SW., Room EB57, Washington, DC 20460. Comments may also be submitted electronically to *OW-Docket@epamail.epa.gov.* Electronic submission of comments is recommended to avoid possible delays in mail delivery. Comments must be received or post-marked by midnight September 10, 2002. For additional information see Additional Docket Information section below.

FOR FURTHER INFORMATION CONTACT: Arleen Plunkett, U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (202) 566–1119. *plunkett.arleen@epa.gov*

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I. Additional Docket Information

The record for this Notice has been established under docket number W–99–18 and includes supporting documentation as well as the printed paper versions of electronic materials. The record is available for inspection from 9 a.m. to 4 p.m. Eastern Standard or Daylight time, Monday through Friday, excluding legal holidays, at the Water Docket, Room EB57, USEPA Headquarters, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

For information on the existing rule in 40 CFR Part 503, you may obtain a copy of A Plain English Guide to the EPA Part 503 Biosolids Rule on the Internet at

http://www.epa.gov/owm/bio.htm or request the document (EPA publication number EPA/832/R–93/003) from: Municipal Technology Branch, Office of Wastewater Management (4204M), Office of Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

II. Abbreviations Used

AMSA—Association of Metropolitan Sewerage Agencies
CFR—Code of Federal Regulations
DL—detection limit
ED01—dose corresponding to a one percent increase in an adverse effect relative to the control response
EPA—Environmental Protection Agency
HQ—hazard quotient
kg/m^3—kilograms per cubic meter
LADD—lifetime average daily dose
Ln—natural logarithm
LOEL—lowest-observed-effect level
Max.—maximum
MGD—million gallons per day
mg/kg/day—milligrams per kilogram per day
MOE—margin of exposure
ng/kg—nanograms per kilogram
NOEL—no-observed-effect level
NSSS—National Sewage Sludge Survey
PCBs—polychlorinated biphenyls
PCDFs—polychlorinated dibenzofurans
PCDDs—polychlorinated dibenzo-p-dioxins
pg/kg/day—picograms per kilogram per day
pg TEQ/day—picograms toxic equivalents per day
pg TEQ/kg-d—picograms toxic equivalents per kilogram body weight per day
POTWs—Publicly Owned Treatment Works
ppt—parts per trillion
Q1*—cancer slope factor
RfD—reference dose
SAB—Science Advisory Board
SERA—screening ecological risk analysis
Std. Dev.—standard deviation
TCDD—tetrachlorodibenzo-p-dioxin
TEF—toxicity equivalent factor
TEQ—toxic equivalent
WHO—World Health Organization

III. How Does This Document Relate to the Proposed Rule?

A. What EPA Proposed

In December 1999, EPA proposed to amend management standards for sewage sludge by adding a numeric concentration limit for dioxins in sewage sludge that is applied to the land (64 Fed. Reg. 72045, Dec. 23, 1999) (''Round Two proposal'').[1] The proposed numeric limit would prohibit land application of sewage sludge that contains greater than 300 parts per trillion (ppt) toxic equivalents (TEQ) of dioxins. EPA based this proposed numeric limit on the results of a risk assessment for dioxins in sewage sludge that is applied to the land.

EPA proposed a standard for dioxins in sewage sludge that is applied to the land in order to protect public health and the environment from unreasonable risks of exposure to dioxins. The purpose of this standard would be to prohibit land application of sewage sludge containing concentrations of dioxins above the limit, and thereby protect the health of highly exposed individuals as well as the health of the general population.

EPA also proposed to exclude from the proposed numeric limit and monitoring requirements treatment works with a flow rate equal to or less than one million gallons per day (MGD) and certain sewage sludge-only entities that receive sewage sludge for further processing prior to land application. This exclusion was based on the relatively small amount of sewage sludge that is prepared by these facilities and entities and, therefore, the low probability that land application of these materials could significantly increase risk from dioxins to human health or the environment.

Finally, EPA proposed technical amendments to the frequency of monitoring requirements for pollutants other than dioxin. These amendments were intended to clarify but, with one exception, not alter the monitoring schedule in the existing sewage sludge rule. The one exception would require preparers of material derived from sewage sludge to determine the appropriate monitoring schedule based on quantity of material derived rather than quantity of sewage sludge received for processing.

B. Developments Since Proposal

The Agency's risk assessment for land application of sewage sludge used for the proposal estimated that sewage sludge with concentrations of dioxins above the proposed limit may present an unreasonable cancer risk to specific highly exposed individuals. Subsequently, for reasons discussed below, the Agency extensively revised the land application risk assessment. EPA also gathered new data on dioxins in sewage sludge that was used in the revised risk assessment. This information, however, does not change the overall technical approach for the proposal.

The new data and the methodology of the revised risk assessment are summarized in this notice. In addition, the results of the revised risk assessment are described in today's notice. Also discussed in today's notice are the possible implications of the new data and revised risk assessment on the proposed limit, the monitoring requirements, the small entity exclusion, and the projected cost of the proposed regulation.

Another development since the proposal in December 1999 concerns EPA's Dioxin Reassessment, which began in 1991. In September 2000, EPA provided Draft Dioxin Reassessment documents to the Science Advisory Board (SAB) for their review, and in May 2001, the SAB issued its report. The current Draft Dioxin Reassessment (USEPA, 2000a), ''Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds,'' consists of three parts. Part I. Estimating Exposure to Dioxin-Like Compounds focuses on sources, levels of dioxin-like compounds in environmental media, and human exposures. Part II. Health Assessment for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds includes information on critical human health end points, mechanisms of toxicity, pharmacokinetics, dose-response, and toxic equivalent factors (TEFs). Part III. Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds describes key findings pertinent to understanding the potential hazards and risks of dioxins, including a discussion of important assumptions and uncertainties.

The Draft Dioxin Reassessment documents do not represent Agency policy or factual conclusions, and EPA has not yet issued final findings or conclusions as a result of the Dioxin Reassessment process. However, much of the information incorporated into the Draft Dioxin Reassessment documents reflects the state of knowledge with respect to dioxin, and scientific updates resulting from or reflected in these

[1] Section 405(d)(2)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1345(d)(2)(A) required EPA to establish numeric limits and management practices for toxic pollutants in sewage sludge identified on the basis of available information. In 1993, EPA promulgated the ''Round One'' rule for such toxic pollutants in sewage sludge that is applied to the land, disposed of in surface disposal units, and incinerated in sewage sludge incinerators. 58 Fed. Reg. 9248 (Feb. 19, 1993). Under section 405(d)(2)(B), EPA was directed to propose and promulgate regulations for other toxic pollutants not regulated in Round One, i.e., ''Round Two.'' The Round Two proposal identified dioxins, and included proposed standards for land-applied sewage sludge, but did not propose further regulation of sewage sludge disposed of by surface disposal or incineration.

documents are relevant to the assessment of risk from dioxins in sewage sludge that is applied to the land. For example, the revised sewage sludge land application risk assessment incorporates the latest science and state of knowledge concerning characteristics of dioxin and exposure pathways which are described in the Draft Dioxin Reassessment.

The Draft Dioxin Reassessment also presents conclusions and findings which are still under review and which EPA has not applied to the analysis of dioxins in sewage sludge. These aspects of the Draft Dioxin Reassessment include, for example, a revised cancer slope factor for calculating cancer risk from exposure to dioxins, and discussions of various approaches to evaluating risks of non-cancer health effects from exposure to dioxins. Although not incorporated into the revised risk assessment, today's Notice also discusses potential implications that these aspects of the Draft Dioxin Reassessment could have for this rulemaking, when and if the Dioxin Reassessment is issued by EPA in final form, and if the final version takes the same approaches and reaches the same conclusions as the current draft.

Finally, EPA was under a consent decree deadline of December 15, 2001 to take final action on the proposed rule. *Gearhart* v. *Whitman,* Civil No. 89–6266–HO (D. Ore.). In accordance with the consent decree, EPA took final action on the proposal not to establish numeric limits or management practices for dioxins in sewage sludge that is disposed of in surface disposal units or incinerated in sewage sludge incinerators. 66 Fed. Reg. 66228 (Dec. 21, 2001). The consent decree deadline was extended to October 17, 2003, for EPA to take final action on the land application portion of the proposed Round Two rule.

C. Proposed Definition of Dioxins

The proposed rule included a definition of ''dioxins'' to specify the seven 2,3,7,8,-substituted congeners of polychlorinated dibenzo-p-dioxins (PCDDs), the ten 2,3,7,8-substituted congeners of polychlorinated dibenzofurans (PCDFs), and the twelve coplanar polychlorinated biphenyl (PCB) congeners to which the numeric standard applies. The vast majority of information on the toxicity of dioxins relates to the congener 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). Animals exposed to 2,3,7,8-TCDD exhibit a variety of biological responses and adverse effects. These include both carcinogenic and non-carcinogenic effects. These effects are primarily classified as chronic effects and consequently they are generally associated with long term exposure over years and decades. Relatively speaking, these exposures and effects are observable at very low levels in the laboratory and in the environment when compared with other environmental toxicants (USEPA, 1994a).

Studies to elucidate the mechanism of toxicity for 2,3,7,8-TCDD in mammalian and other species have indicated that the overall shape and chlorine substitution of this congener are keys to its biological potency. The fact that all of the lateral positions (the 2,3,7,8 positions) on the multi-ring system are substituted with chlorine and that the overall molecule assumes a flat or planar configuration apparently are essential factors that make this congener biologically active. Other congeners with a similar structure and chlorine substitution pattern are assumed to exhibit similar biological properties. These include the other six 2,3,7,8-chlorinated substituted dibenzo-p-dioxin congeners, the ten 2,3,7,8-chlorinated substituted dibenzofuran congeners and the 12 coplanar PCB congeners. Coplanar PCB congeners are those congeners with no more than one ortho position and both para positions substituted with chlorine in the biphenyl ring system. Additionally, the coplanar PCB molecule assumes a relatively planar (i.e., flat) configuration.

The proposed TEQ numeric limit would apply to these 29 congeners in ppt TEQ or nanograms TEQ per kilogram of dry sewage sludge. The TEQ concentration is calculated by multiplying the concentration of each congener in the sewage sludge by its corresponding ''toxicity equivalent factor,'' or TEF, and then summing the resulting products from this calculation for all 29 congeners. The TEFs (relative potencies) are based on expert judgment about toxicity and other biological effects for the individual compounds. The TEQs of these compounds are summed because they are believed to act by the same mechanism of toxicity. The December 1999 proposal specified that the International TEF scheme described in USEPA, 1989, would be used for the 17 2,3,7,8-substituted PCDDs and PCDFs, and the World Health Organization's TEF scheme (Van den Berg M, et al., 1998) would be used for the 12 coplanar PCBs, because the sewage sludge data EPA had at that time used these TEF schemes. The World Health Organization (WHO) has subsequently recommended and developed a single TEF scheme which includes all relevant information on dioxins, furans and dioxin-like (coplanar) PCBs. As part of this process, various terminologies or definitions applicable to TEFs were reviewed and standardized.

The 2001 sewage sludge data and the revised risk assessment use the WHO's 1998 TEF scheme (Van den Berg M, et al., 1998) for all 29 dioxin, furan and coplanar PCB congeners. EPA intends to use the 1998 WHO TEF scheme (or later, if the WHO adopts a revised scheme) for any final Part 503 TEQ numeric limit.

A 1997 WHO meeting of experts concluded that an additive TEF model remained the most feasible risk assessment method for complex mixtures of dioxin-like compounds. The WHO panel indicated that although uncertainties in the TEF methodology have been identified, one must examine this method in the broader context of the need to evaluate the public health impact of complex mixtures of persistent bioaccumulative chemicals. On this basis, EPA has used the 1998 WHO TEF methodology for the Agency's Draft Dioxin Reassessment, noting that it decreases the overall uncertainties in the risk assessment process.

A Panel of EPA's Science Advisory Board has reviewed the Agency's use of the 1998 WHO TEF scheme. The consensus of the Panel was that this is a reasonable and widely accepted way of dealing with the joint effects of dioxin-like compounds on human health. The majority of the Panel noted that the TEF approach is well accepted internationally.

IV. Why Did EPA Collect New Data and Revise the Land Application Risk Assessment?

The proposal to amend the Standards for the Use or Disposal of Sewage Sludge to limit dioxins in sewage sludge that is applied to the land was followed by a 90 day public comment period. During this time the risk assessment which supported the proposed rulemaking also was peer reviewed in accordance with EPA peer review procedures. Both the public comments and the peer review comments raised significant issues concerning the methodology and assumptions used for the land application risk assessment. The public and peer review comments also emphasized the need to collect new data on dioxins in sewage sludge. This data is used in the risk assessment, economic analysis, and other aspects of the rulemaking.

The data on dioxins in sewage sludge used for the proposal came from two separate sources. The data on dioxin and furan congeners was from the 1988 EPA National Sewage Sludge Survey

(USEPA, 1990). Since the National Sewage Sludge Survey (NSSS) did not include specific information on coplanar PCBs, EPA used a separate database to estimate the amount of coplanar PCBs found in sewage sludge (Green, *et al.,* 1995). In addition to developing a single database which includes information on all 29 dioxin-like congeners, EPA developed new data on dioxins in sewage sludge to test the Agency's assumption that dioxin levels in sewage sludge have changed over time, and to more accurately determine dioxin levels in sewage sludge using analytical methods with lower limits of detection. The Agency is also using this more recent data to more reliably estimate the risk, impacts, and costs associated with dioxins in land applied sewage sludge. A discussion of the sewage sludge sampling and data analysis is presented in Section V. of this Notice.

The principal comment concerning the risk assessment methodology was that the Agency should use a probabilistic approach instead of the deterministic approach that was used for the proposal. A probabilistic approach uses values for certain input variables over the range of available data, instead of the deterministic approach of determining, or setting, certain input variables at particular values. Conducting a risk analysis with a probabilistic approach can yield better information about sources of variability and uncertainty in the final risk estimates, compared to conducting a risk analysis with a deterministic approach.

Other comments on the risk assessment recommended that the Agency use an exposure analysis more consistent with that used in the Agency's current Draft Dioxin Reassessment (USEPA, 2000a); that the Agency use data from the current EPA Exposure Factors Handbook (USEPA, 1997); and that the risk assessment include a sensitivity analysis of the critical input variables.

The revised risk assessment is described in Section VI. of this Notice. The revised risk assessment was submitted for peer review. The consensus view of the peer reviewers agreed with the revised risk assessment methodology and assumptions on input parameters. The revised risk assessment, described below and available in the docket, incorporates revisions made in response to the peer review.

V. What Information Concerning Dioxins in Sewage Sludge Does the New Data Provide?

A. What Data Were Collected in the EPA 2001 Dioxin Update of the National Sewage Sludge Survey?

The EPA 2001 dioxin update of the NSSS provides data that support the calculation of unbiased national estimates (i.e., based on a random selection of publicly owned treatment works) for dioxin and dioxin-like compounds in sewage sludge (USEPA, 2002a). The publicly owned treatment works (POTWs) sampled in the EPA 2001 dioxin update survey were randomly selected from all POTWs in four size categories: <1 MGD, 1 MGD–10 MGD, 10 MGD–100 MGD and >100 MGD. This survey updates the 1988 NSSS. The updated survey includes coplanar PCBs, which had not been included in the 1988 NSSS because approved analytical methods for these analytes were not available at that time. The updated survey also uses the current TEFs, which have been revised since the 1988 NSSS. For the EPA 2001 dioxin update survey, EPA collected sewage sludge samples from 94 POTWs selected from the 174 POTWs which had been surveyed in the 1988 NSSS. The sample of 174 POTWs included in the 1988 NSSS were selected from the national population (as of 1988) of approximately 10,000 POTWs with secondary treatment. EPA used a survey design which accounted for the different numbers of POTWs in different size categories for both the 1988 NSSS and the EPA 2001 dioxin update survey. EPA conducted the sampling at the 94 POTWs in the first calendar quarter of 2001 and completed the laboratory analysis, data review, and database development by mid-2001.

B. What Techniques Were Used To Collect Samples?

Sewage sludge samples were collected, documented, preserved, and shipped to the laboratory where the analyses for dioxins were conducted using the protocol entitled ''Sampling Procedures for the 2001 National Sewage Sludge Survey'' (USEPA, 2001a). This document specifies the sampling procedures used for the sewage sludge samples obtained from the 94 POTWs that participated in the EPA 2001 dioxin update survey. The procedures were used on a number of different types of sewage sludge samples including liquids, samples with low solids content, dewatered sewage sludges from filter presses and centrifuges, composted products, and pellets. The sampling protocol specifies sample preservation methods, collection devices and apparatus, containers, types of labels, and label information. In accordance with the sampling protocol used for the EPA 2001 dioxin update survey, duplicate samples were collected for 15 percent of the samples collected for subsequent analysis to determine the precision of the analyses. At each treatment works sampled, a second sample aliquot was collected and archived for potential future analyses. Chain of custody forms were completed for the samples collected at each sampling site to ensure the integrity of the results of the survey.

C. What Analytical Methods Were Used?

EPA used analytical methods that are considered state of the art for the sewage sludge matrix. Dioxin and dibenzofuran congener concentrations were determined by EPA Method 1613B (USEPA, 1994b) using high resolution gas chromatography-mass spectrometry as the end point system of measurement. The coplanar PCB analyte concentrations were determined by EPA Method 1668A (USEPA, 1999a) which employs the same type of measuring instrumentation. Method 1613B is an official EPA analytical methodology codified at 40 CFR Part 136. EPA anticipates that Method 1668A will be codified in Part 136 within the next two years.

D. How Were the Concentrations of Dioxin Measured?

The sewage sludge samples were analyzed for 29 dioxin congeners consisting of the 7 dioxin congeners, 10 dibenzofuran congeners, and 12 coplaner PCB congeners that EPA proposed for the definition of ''dioxins'' (see Section III.B. above). For the EPA 2001 dioxin update survey, whole (wet) weight sample sizes were individually determined for each sewage sludge sample by considering the percent solids in each sample. Smaller whole weight sample sizes were used for the analyses when the percent solids content of the sewage sludge sample was greater, and vice versa. This approach led to lower and more consistent detection limits for concentrations of target analytes for all of the sewage sludge samples in the EPA 2001 dioxin update survey. This procedure was a significant improvement compared to the method used for handling the sewage sludge samples in the 1988 NSSS. For the 1988 NSSS, equal whole weight sample sizes were used regardless of the percent solids content of the samples. This led to higher and less consistent detection limits for the sewage sludge samples in

the 1988 NSSS. In addition, other improvements in the analytical methodology and the analytical instrumentation also contributed to lower and more consistent detection limits than those obtained in the 1988 NSSS.

E. How Were the Concentrations Reported?

All of the individual 29 congener concentrations were converted to TEQ concentrations by multiplying the congener concentrations by the 1998 WHO TEFs. For comparison purposes, TEQs for total dioxin and dioxin-like compounds in the 1988 NSSS samples and the EPA 2001 dioxin update survey samples are reported in Table 1, Table 2 and Table 3 in nanograms per kilogram (ng/kg) dry weight basis.

F. How Were the Non-Detect Measurements Handled in Developing National Summary Statistics?

Where congeners were not detected in sample measurements, three different substitution methods were used in calculating national estimates of dioxin concentrations in sewage sludge: (1) Zero was substituted for a non-detect; (2) one-half the detection limit for the congener was substituted for a non-detect; (3) the detection limit for the congener was substituted for a non-detect. As a result of the small detection limits achieved in the EPA 2001 dioxin update survey, there were only small differences in the national summary statistics among the three substitution methods for the EPA update survey.

G. What Were the Results of the EPA 2001 Dioxin Update of the National Sewage Sludge Survey?

Table 1 presents the mean, standard deviation, maximum and 99th, 98th, 95th, 90th and 50th percentiles dioxin TEQ values for the sewage sludges from the 94 POTWs in the EPA 2001 dioxin update survey. Table 1 reports summary results separately for dioxins and furans, coplanar PCBs, and total dioxin-like compounds (i.e., 29 dioxin, furan and coplanar PCB congeners) using the three alternative substitution values for non-detects (i.e., zero, one-half the detection limit, and equal to the detection limit). In Table 1, the results obtained using zero, one-half the detection limit and the detection limit are shown in the rows denoted by ''0'', ''½ DL'' and ''DL'', respectively. The complete statistical analysis of the data from the EPA 2001 dioxin update survey is presented in Statistical Support Document for the Development of Round Two Sewage Sludge Use or Disposal Regulations (USEPA, 2002a).

TABLE 1.—EPA 2001 DIOXIN UPDATE SURVEY—NATIONAL TOXIC EQUIVALENT ESTIMATES (NANOGRAMS/KILOGRAM DRY MATTER BASIS)—TOTAL TOXIC EQUIVALENTS FOR POTWS

Method	Mean	Std. Dev.	Max.	99th %	98th %	95th %	90th %	50th %
Total Dioxin and Furan TEQs (nanograms/kilogram dry matter basis)								
0	21.70	47.5	682.00	100.00	54.40	33.30	31.40	15.50
½ DL	21.70	47.5	682.00	100.00	54.40	33.30	31.60	15.50
DL	21.80	47.5	682.00	100.00	54.40	33.30	31.70	15.50
Total Coplanar PCB TEQs (nanograms/kilogram dry matter basis)								
0	5.22	10.3	58.30	50.60	44.80	13.10	9.66	2.05
½ DL	9.87	14.0	58.30	55.10	54.50	49.40	19.20	6.04
DL	14.50	22.4	103.00	97.2	91.60	78.00	35.00	8.11
Total Dioxin and Dioxin-Like TEQs (nanograms/kilogram dry matter basis)								
0	26.90	49.6	718.00	114.00	76.60	59.30	42.80	19.70
½ DL	31.60	50.0	718.00	115.00	80.10	73.50	55.10	23.40
DL	36.30	52.7	718.00	138.00	96.00	113.00	69.10	24.00

Under the proposed rule, treatment works with a flow rate equal to or less than one MGD and certain sewage sludge-only entities that receive sewage sludge for further processing prior to land application would be excluded from the proposed numeric limit and monitoring requirements. The EPA 2001 dioxin update survey provides additional data with respect to dioxin concentrations from POTWs that would be excluded under the proposal. Table 2 below shows the results for dioxin concentrations in sewage sludge for POTWs with flows of less than and greater than one MGD. Results shown in Table 2 indicate very small differences in the median dioxin concentrations between small and large POTWs. At the upper percentiles, the differences between the small and large POTW values are substantial. However, the significance of these differences is difficult to assess due to the relatively small sample sizes, the sensitivity of the results to the treatment of non-detect measurements and the low precision typically associated with estimates of upper percentiles based on small sample sizes. An additional discussion of the proposed exclusion for small entities is presented in Section X. of this Notice. EPA requests comments on the significance of the differences in dioxin concentrations in sewage sludge measured at facilities with wastewater flows greater than one MGD compared to dioxin concentrations in sewage sludge at facilities with wastewater flows less than one MGD.

TABLE 2.—EPA 2001 DIOXIN UPDATE SURVEY—TOTAL DIOXIN AND FURAN AND DIOXIN-LIKE PCB NATIONAL TEQ (NANOGRAMS/KILOGRAM DRY WEIGHT BASIS) ESTIMATES—POTWS BY FLOW GROUPS

Method	Zero for Nondetects		½ DL for Non-detects		DL for Nondetects	
Estimate	≤1 MGD	>1 MGD	≤1 MGD	> 1 MGD	≤1 MGD	> 1 MGD
Mean	22.10	38.50	26.50	44.10	30.80	49.60
Std. dev	16.8	86.7	18.3	86.8	24.6	88.2 dev.
Maximum	78.60	718.00	78.6	718.00	118.00	718.00
99th %	71.80	401.00	76.40	403.00	109.00	406.00
98th %	65.10	265.00	74.20	269.00	101.00	276.00
95th %	46.00	62.60	67.10	94.80	77.00	134.00
90th %	37.20	54.00	46.10	64.20	46.60	86.90
50th %	19.90	18.90	22.90	22.60	23.80	25.80

H. How Do the Results of the EPA 1988 National Sewage Sludge Survey Compare with the EPA 2001 Dioxin Update Survey?

A comparison of results for dioxin and furan congeners obtained in the 1988 and 2001 surveys is presented in Table 3.

TABLE 3.—NATIONAL ESTIMATES (NANOGRAMS/KILOGRAM DRY MATTER BASIS) FOR DIOXIN AND FURAN CONGENERS IN THE EPA 2001 DIOXIN UPDATE SURVEY AND NSSS 1988

Method	Zero for nondetects		½ DL for nondetects		DL for nondetects	
Estimate	2001	1988	2001	1988	2001	1988
Mean	21.70	46.50	21.70	67.30	21.80	88.20
Std. dev	47.5	153.0	47.5	153.0	47.5	157.00
Maximum	682.00	1870.00	682.00	1870.00	682.00	1870.00
99th %	100.00	450.00	100.00	453.00	100.00	466.00
98th %	54.40	402.00	54.40	404.00	54.40	455.00
95th %	33.30	301.00	33.30	303.00	33.30	340.00
90th %	31.40	56.70	31.60	152.00	31.70	226.00
50th %	15.50	5.68	15.50	34.20	15.50	52.40

The values obtained in the EPA 2001 dioxin update survey for the upper percentiles are lower than those obtained in the 1988 NSSS. On this basis, the concentrations of dioxins in sewage sludge appear to have declined since 1988. However, the significance of these differences between the two surveys is not certain due to changes in the sampling procedures and analytic methods . These comparisons do not include coplanar PCB congeners because the 1988 NSSS did not collect coplanar PCB congener data. For the purposes of the December 1999 proposed rule, data on coplanar PCB levels in sewage sludge from a 1995 Association of Metropolitan Sewerage Agencies Survey (Green, *et al.,* 1995) were combined with the 1988 NSSS dioxin and furan results to provide an estimate of total dioxin levels in sewage sludge. EPA requests comments on the significance of the differences in dioxin concentrations in sewage sludge measured in the EPA 2001 dioxin update survey compared to dioxin concentrations in sewage sludge measured in the 1988 NSSS.

VIII.Why Is Temporal Variability of Dioxin in Sewage Sludge Important?

The variability of dioxins in sewage sludge over time is important for a number of reasons. First, understanding the temporal variability of dioxin concentrations in sewage sludge is important for establishing numerical limits for dioxins in sewage sludge which protect public health and the environment with an adequate margin of safety. Specifically, this information helps in assessing the likelihood that individuals will be exposed to higher levels of dioxins from land application of sewage sludge over time. A more complete discussion of this issue is presented in the risk characterization in Section VI.L. of this Notice. Second, information on the variability of dioxin concentration in sewage sludge is important for determining the appropriate frequency of monitoring for concentrations of dioxins in sewage sludge that will ensure that any numerical limit that is established will not be exceeded.

J. What Does the Variability of the Dioxin Levels Show?

It is not possible to draw general inferences with regard to the variability or differences in dioxin levels observed in the two surveys. This is due to a number of factors that include the large time interval between the surveys (i.e., 13 years), changes that may have occurred at the POTWs, and changes and improvements in analytical methods. It is possible, however, to make a number of observations with regard to changes in dioxin levels based on the data. Of the 94 POTWs participating in both the 1988 NSSS and the EPA 2001 dioxin update survey, a total of 14 POTWs have sewage sludge dioxin concentrations (dioxins and furans only) equal to or greater than 93 ppt TEQ from at least one of the surveys. These same 14 POTWs exhibited the greatest differences in the dioxins and furans concentrations when comparing the results of the 1988 and 2001 EPA surveys. The other 80 POTWs

participating in both surveys have substantially smaller differences, as well as lower dioxin levels measured in both surveys. Of the 14 POTWs with the greatest differences between the two surveys, four had large increases in sewage sludge dioxin concentrations and ten had large decreases in sewage sludge dioxin concentrations from 1988 to 2001.

Based on these data, no POTWs had consistently high levels of dioxins in sewage sludge. It appears that sewage sludge samples with higher concentrations of dioxins may experience a greater variability in dioxin concentrations over time and that higher dioxin levels may not remain high for a significant period of time. Likewise, POTWs with moderate or low levels of dioxins in their sewage sludge may experience much less variability in dioxin concentrations over time. It is possible that in the group of POTWs where higher concentrations of dioxins were measured in their sewage sludge, there are unidentified sources with relatively high levels of dioxins entering the sewers intermittently. The second group of POTWs where lower concentrations of dioxins were measured in both surveys appear to be experiencing typical environmental background variation of dioxin levels. The possible sources of dioxins which contribute to higher levels of dioxins in sewage sludge are discussed in greater detail later in this Section and Section XII of the Notice. EPA's assessment of the variability in higher levels of dioxins in sewage sludge is discussed further as part of the risk characterization in Section VI.L. of this Notice.

K. What Does Month-to-Month Variability in the Concentration of Dioxins Show?

EPA also examined both long and short term variability in sewage sludge dioxin concentrations in three wastewater treatment plants that have routinely monitored for dioxins in their sewage sludge over relatively long periods of time and voluntarily submitted their data to EPA (USEPA, 2001b). EPA did this to better understand the extent of variability using data collected on a relatively frequent basis.

Of the three POTWs which provided their data to EPA, one of the POTWs provided data on two different sewage sludge products that they produce. These data were standardized using the WHO_{98} standard for TEQs to provide consistency.

The December 1999 proposal specified annual monitoring for land applied sewage sludges with dioxin concentrations between 30 ppt TEQ and the proposed limit of 300 ppt TEQ. Sewage sludges with two consecutive annual dioxin measurements less than 30 ppt TEQ would be required to monitor once every five years. These less frequent monitoring requirements were based on EPA's assumption that dioxin concentrations in sewage sludge remained relatively constant over time.

The data for the facilities where monthly data were available indicate that the dioxin concentrations are relatively consistent over time on a month-to-month basis. The maximum monthly concentration was within a factor of two to four times the average (mean) concentration for the same facility. Similar to the comparison data from the 1988 NSSS and the 2001 update, the variability appeared the greatest for the facility with the highest dioxin concentrations measured in its sewage sludge. A complete analysis of the month-to-month data is presented in the Statistical Support Document for the Development of Round Two Sewage Sludge Use or Disposal Regulations (USEPA, 2002a).

The month-to-month variability in the dioxins concentration observed in the sewage sludge for which the Agency had data, as well as the longer term variability observed in the small percentage of sewage sludge with higher concentrations of dioxins (discussed above), has led us to re-evaluate the proposed monitoring frequency. A more complete discussion of monitoring frequency is presented in Section IX. of this Notice.

L. What Other Data Did EPA Evaluate?

The Association of Metropolitan Sewerage Agencies (AMSA) voluntarily collected sewage sludge samples from 171 POTWs and analyzed these samples for dioxins using the same methods used for the 2001 EPA dioxin update survey. AMSA submitted the results of their survey to EPA in a report entitled ''AMSA 2000/2001 Survey of Dioxin-Like Compounds in Biosolids: Statistical Analyses (Final Report)'' (AMSA, 2001). The AMSA survey began in October 2000 and was completed in July 2001. The AMSA survey was designed to measure levels for the same 29 dioxin and dioxin-like congeners measured in the EPA 2001 dioxin update survey. AMSA also compared the results of their 2001 survey with the results of their 1994/1995 survey of dioxins in sewage sludge. Participation in AMSA's survey was on a voluntary basis.

Most participants in the AMSA survey were larger POTWs which make up the bulk of the AMSA membership. Some non-AMSA members also participated in the AMSA survey, including some smaller POTWs. Overall, 111 separate wastewater treatment agencies participated in the 2001 AMSA survey, providing 200 samples from 171 POTWs, located in 31 states. The sewage sludge dioxin concentrations measured in the AMSA survey generally ranged from 7.1 ppt TEQ to 256 ppt TEQ, with one sample measured at 3,590 ppt TEQ. The mean (average) concentration and the median dioxin concentrations in sewage sludge from the AMSA survey were 48.5 ppt TEQ and 21.7 ppt TEQ, respectively.

EPA has found the data from the AMSA survey to be useful in describing dioxins in sewage sludge from larger POTWs. The results of the AMSA survey tend to corroborate the results obtained from the EPA 2001 dioxin update survey. However, the AMSA results were not used by EPA to establish national estimates of dioxin concentrations in sewage sludges or for purposes of estimating risks from dioxins in land-applied sewage sludge. EPA did not use these results because the POTWs participating in the AMSA survey volunteered for this survey and were, therefore, not randomly selected, as were the POTWs in the EPA 2001 dioxin update survey. The final report from the AMSA survey and associated appendices are in the docket and can also be found on AMSA's web site at: *http://www.amsa-cleanwater.org/advocacy/dioxin/dioxin.cfm.*

VI. What Are the Principal Features and Assumptions of the Revised Land Application Human Health Risk Assessment?

The revised risk assessment is entitled ''Exposure Analysis for Dioxins, Dibenzofurans, and CoPlanar Polychlorinated Biphenyls in Sewage Sludge—Technical Background Document'' (USEPA, 2002b). The risk assessment methodology, assumptions, results and characterization are summarized below.

The revised risk assessment contains the following standard elements used in EPA human health risk assessments: hazard identification, dose-response assessment, exposure assessment, and risk characterization. The revised risk assessment includes a probabilistic methodology to determine the adult and child exposure to the 29 dioxin and dioxin-like congeners. For the proposed rule, the risk assessment depended on a deterministic analysis based on single value inputs and outputs. A probabilistic analysis was well-suited for this risk assessment because sewage

sludge is generated nationwide and, therefore, may be used on agricultural fields anywhere in the United States. The probabilistic analysis not only captures the variability in sewage sludge application practices, it also captures the differences in the environmental settings (e.g., soils, meteorology and agricultural practices) in which sewage sludge may be land-applied.

In addition to a new methodology of analysis, the revised risk assessment uses new inputs which include a redefined ''highly exposed individual,'' new pathways and mechanisms of exposure consistent with EPA's Draft Dioxin Reassessment (USEPA, 2000a. See Part I, Vol. 3, Chap. 2.), a number of new exposure factors adopted from the latest EPA Exposure Factors Handbook (USEPA, 1997), and a sensitivity analysis to determine the relative importance of the input variables. In this Section, EPA describes the features of the revised risk assessment with emphasis on the new inputs used in the probabilistic analysis.

A. What Did the Hazard Identification Analysis Conclude?

The risk assessment that EPA used for the December 1999 proposal identified cancer as the human health endpoint, i.e., as the ''hazard'' (64 FR 72051). The revised risk assessment does not change this hazard identification and continues to assess the risk of cancer as the human health endpoint.

B. What Did the Dose-Response Assessment Conclude?

EPA's dose-response assessment evaluated the risk of the dioxin, dibenzofuran, and PCB congeners using cancer slope factors that are based on the toxicity of the most highly characterized of the dioxin congeners, 2,3,7,8-TCDD (USEPA, 2000a. See Part II, Chap. 7, Part A.). The cancer slope factor for TCDD used by EPA in recent assessments, including the revised sewage sludge land application risk assessment, is 1.56×10^{-4}/picograms toxic equivalents/kilogram body weight/day (pg TEQ/kg-d) (USEPA, 1994a). The cancer slope factor (also referred to as Q* or ''cancer potency'') is a numeric value which relates the incremental probability of developing a cancer from exposure to a particular substance. This cancer slope factor value is expressed as a lifetime excess cancer risk per unit exposure, and is usually quantified in terms of (milligrams of substance per kilogram of body weight per day)$^{-1}$. The greater the numeric value of the cancer slope is, the greater the carcinogenic potency of the substance. The same slope factor is used to estimate cancer risks for both children and adults. For this analysis, only the cancer endpoint was evaluated and a linear dose response relationship was used in the analysis.

An extensive discussion of the dose response mechanism for TCDD is provided in the Draft Dioxin Reassessment document (USEPA, 2000a. See Part II, Chap. 8.). The Draft Dioxin Reassessment also includes a revised cancer slope factor. Because the Draft Dioxin Reassessment is preliminary and does not state EPA policy conclusions or factual findings, the draft cancer slope factor was not used in the revised risk assessment. However, for purposes of discussion and public comment, this Notice includes a discussion of how the EPA Draft Dioxin Reassessment could apply to the analysis of impacts from dioxins in land-applied sewage sludge, including use of the revised cancer slope factor, in Section VII.A. of this Notice. EPA is seeking comment on the implications of this information in the event that, prior to taking final action on the Round Two rule, EPA finalizes a cancer slope factor or other policies or approaches currently reflected in the current Draft Dioxin Reassessment and discussed in this Notice.

C. How Was the Exposure Analysis and Risk Assessment Conducted?

The primary methodology for the exposure analysis was to estimate exposure to dioxins in land-applied sewage sludge using a probabilistic approach. A probabilistic exposure analysis produces a distribution of exposures which is then used to estimate the range of risks for the highly exposed population being modeled. The distribution of exposure is determined by varying parameter values where data is available over multiple iterations of the exposure model. Values were varied for such parameters as dioxin concentrations in sewage sludge, number of years on the farm, and number of applications. While ranges of data were available for the majority of input parameters, ''single point'' values were used for some key input parameters for the exposure analysis, including values for parameters used to define the highly exposed population, soil ingestion rates, and number of days per year of exposure. These assumptions are discussed in greater detail elsewhere in this Notice.

A receptor is the entity exposed to a physical, chemical or biological source which can cause an adverse effect. In this case the receptors are infants, children, and adults in highly exposed farm families living on farms where sewage sludge is applied. ''Highly exposed'' farm families are defined as farm families whose diets consist of 50 percent of products produced on their own farm. EPA estimates that the maximum number of individuals in this highly exposed population would be less than 11,000 even if all of the Nation's sewage sludge were applied to family farms (see Section VI.L.). Since the general population consumes only a small fraction of their diets from products grown on farms with land-applied sewage sludge, EPA assumed that a regulatory decision that is protective of this highly exposed family is also protective of the general population.

The probabilistic analysis was performed using a Monte Carlo simulation. In a Monte Carlo simulation, the model is run for a number of iterations, each producing a single result (e.g., a single estimate of cancer risk). For this assessment, 3,000 iterations were run in the Monte Carlo simulation; therefore, the output of the probabilistic analysis was a distribution of 3,000 values. This distribution represents the distribution of possible outcomes, which reflects the underlying variability in the data used in the analysis. These results were then used to identify risk to the highly exposed population at various percentile levels (e.g., 90th percentile risk value). As noted above, the corresponding percentile risk values to the general population would be significantly lower.

Some model input parameters used in the Monte Carlo simulation, such as the concentrations of dioxin congeners in sewage sludge samples, were drawn from statistical distributions. For others, variability was associated with variable locations; thus, location variability was explicitly considered in the setup of the data used for the probabilistic analysis. For location-dependent parameters, locations were first selected at random with equal probability of occurrence [2] based on the 41 climate regions. These regions defined a set of related environmental conditions (e.g., soil type, hydrogeologic environment) that characterized the environmental setting. All location-specific parameters (e.g., rainfall) thus remained correlated, while non-location-specific parameters were varied both within and among locations.

D. How Did the Framework Change?

In the exposure analysis, the risk assessment evaluated a revised scenario for exposure to sewage sludge: exposure

[2] Information was not available to allow the weighting of these 41 climate regions based on the number of farm families in each region.

of a farm family that consumes 50% of its diet from home-produced crops and animal products grown on their own sewage sludge-amended land. For the December 1999 proposal, a rural family consuming a smaller proportion of home-grown products derived from sewage sludge-amended soil was modeled in the original risk assessment. EPA selected the new scenario specifically to address groups of individuals who may have high levels of exposure to dioxins in sewage sludge. EPA assumed that the farm family lives immediately adjacent to the sewage sludge-amended field and is exposed to a combination of agricultural products produced on the farm, including beef and dairy products. The farm family also is assumed to raise free-range chickens near their house (in the buffer area). On the opposite side of the house from the field and pasture is a fishable stream where a recreational fisher is assumed to catch fish for personal consumption. There are four types of people who were assumed to be representative of the individuals who would be exposed to dioxin from sewage sludge: an infant of a farmer, a child of a farmer, an adult farmer, and an adult recreational fisher. The exposure to the adult fisher was combined with that of the adult farmer, when the total exposure to the adult was calculated. Therefore, the fisher and farm adult can be considered as the same adult. Table 4 summarizes the exposure pathways for each type of individual.

TABLE 4.—RECEPTORS AND EXPOSURE PATHWAYS

Receptor	Inhalation of ambient air	Ingestion of soil	Ingestion of above- and below-ground produce	Ingestion of beef and dairy products	Ingestion of poultry and egg products	Ingestion of fish	Ingestion of breast milk
Adult	✔	✔	✔	✔	✔	✔	
Child	✔	✔	✔	✔	✔		
Infant							✔

The new scenario includes new exposure pathways and exposure mechanisms, incorporating updated scientific analysis for dioxin, which is also reflected in EPA's Draft Dioxin Reassessment (USEPA, 2000a. See Part I, Vol. 3, Chap. 2.). For the proposed rule, the risk assessment evaluated pastured animals eating sewage sludge containing dioxins after sewage sludge land application. The revised risk assessment assumes tilled soil only for production of vegetables, fruits, and root crops and untilled soil for pasturage to which sewage sludge is applied. Half the acreage on the modeled farm is assumed to be used for crop production (tilled) and half permanently used for pasturage (untilled). Rather than assuming that cattle are exposed to dioxins only by eating sewage sludge-containing soil, the Agency now assumes that cattle are exposed to dioxins in sewage sludge by three mechanisms: ingesting dioxins from the leaf surfaces of plants containing dioxins which have volatilized from the top two centimeters of the soil to which sewage sludge has been applied; ingesting dioxins from sewage sludge particles which remain on the leaf surfaces of plants after land application; and direct ingestion of sewage sludge-containing soil by the grazing cattle. Of these three mechanisms of dioxin transfer to cattle from the sewage sludge, the predominant mechanism is ingestion of dioxins from leaf surfaces containing dioxins which have volatilized from the sewage sludge-soil mixture. The dioxins from land-applied sewage sludge that does not erode away from the land application site are assumed to reside permanently in the top two centimeters of the soil. Another new assumption reflecting the latest science on dioxin and consistent with EPA's Draft Dioxin Reassessment documents is that chickens will be ingesting dioxins from the buffer area which receives dioxins from the pasture and crop fields through erosion. EPA requests comments on the Agency's use of the farm family scenario described for the revised risk assessment. EPA also requests comments on the specific assumptions outlined above.

E. What Are the Factors in Estimating How Much Dioxin is Released to the Environment?

Various inputs for sewage sludge characteristics were used in the exposure analysis to determine how much dioxin is available for volatilization, erosion or leaching. These included: concentrations of each of the 29 congeners in sewage sludge (empirical distribution of concentrations for each dioxin congener varied by sample), bulk density of sewage sludge (single value), porosity of sewage sludge (single value), percent moisture of sewage sludge when applied to agricultural fields (single value), and fraction of organic carbon of sewage sludge (single value). The use of the congener concentrations was different in the revised exposure analysis. Rather than using point estimates for the 29 congeners for the probabilistic analysis, all of the congener concentrations measured in the 94 samples from the EPA 2001 dioxin update survey were used. Specifically, for each iteration of the Monte Carlo analysis, one of the 94 sewage sludge samples from the EPA 2001 dioxin update survey was randomly selected and the concentrations of all congeners from that sample were considered in that iteration of the analysis. For each iteration, the concentration of dioxins in the sludge was assumed to remain constant for the entire period of application since family farms would likely receive sewage sludge from a single POTW.

When the chemical content of a substance is analyzed, the assumption used to address non-detected chemicals can have a significant impact on the reported results if the detection limits are relatively large. Non-detects can be reported as zero, one-half the detection limit, or the detection limit. Because of the excellent sensitivity and limits of detection achieved by the analytical procedures used in the EPA 2001 dioxin update survey, the reported values for dioxin congeners in the samples of sewage sludge are relatively unchanged whether non-detects are treated as zero, one-half of the detection limit, or at full detection limit. For this risk assessment, EPA assumed that non-detects are equal to one-half of the detection limit. This assumption is prevalently used by EPA for risk assessments based on data sets for non-detects, including the Draft

Dioxin Reassessment for calculating TEQ concentrations for dioxins in environmental media (i.e., air, soil, water) and in exposure media (i.e., food). Furthermore, it appears that there would be no quantifiable difference in the estimated risk regardless of the assumption made for non-detects for the reasons discussed above. EPA requests comment on the treatment of non-detects in the revised risk assessment and the effect on estimating risk.

Another sewage sludge characteristic, bulk density of sewage sludge as it is applied to the agricultural field, was used to estimate the loading of constituents to the soil in the model. Sewage sludge is assumed not only to add constituents to the soil, but also to add volume when mixed with the existing soil. Thus, bulk density is a required parameter for the modeling scenario used in the exposure analysis. Bulk density of the land-applied sewage sludge may be a direct measurement or may be estimated using the dry bulk density, the percent moisture, and the porosity of the sewage sludge.

F. What Are the Factors in Estimating How Much Dioxin Is Being Transported in the Environment to the Individual in the Farm Family?

A conceptual site model was used to represent exposures to the highly exposed modeled population from land application of sewage sludge. To capture some of the variability in environmental settings across the United States, the conceptual site model was placed in different regions throughout the continental United States.

The risk assessment was intended to be representative of a national distribution of environmental conditions. The 48 contiguous states (excluding Hawaii, Alaska, and the off-shore possessions) were divided into 41 meteorologic regions. These regions were selected to represent the national variation of location-specific variables. Each area is assumed to represent a single climate region (i.e., conditions within that area can be modeled using the meteorologic data from a single meteorologic observation station). Meteorologic and climate data were used in air modeling, partitioning in the source model, and surface and subsurface fate and transport modeling.

In addition, farm areas were assumed to be linked to geographic area. Large farms are more common in the Midwest and western parts of the United States, and smaller farms are more common in the eastern and southern parts of the United States. Thus, a regional estimate for a median farm size was developed and was used in this risk assessment. The U.S. agricultural census contains estimates for the distribution of farms within each county. These data were used to develop a median farm size for each county. These county-wide median farm sizes were classified according to the 41 geographic areas and the median of the median farm sizes was estimated for each of the 41 regions. The median area was then used in the air modeling and the erosion to surface water modeling. This methodology was used to account for the regional variation in agricultural practices throughout the nation, but it did not consider variation in size within a single region.

A series of models was used to estimate concentrations of the congeners in the environment with which a farm family may come into contact. The revised risk assessment assumes that there are six direct and indirect exposure pathways that the models describe:

- Inhalation of ambient air;
- Incidental ingestion of soil in the buffer area;
- Ingestion of above- and below-ground produce grown on the crop land;
- Ingestion of beef and dairy products from the pasture;
- Ingestion of home-produced poultry and eggs from the buffer area; and
- Ingestion of fish from the nearby water body.

As indicated above, a regional approach was used to define the area surrounding the agricultural application site. A source partition model was then used to estimate environmental releases of each constituent. These estimated environmental releases in turn provided input to the fate and transport models to estimate media concentrations in air, soil, and surface water. A food chain model was used to estimate constituent concentrations in produce, beef, dairy products, poultry, eggs, and fish.

The source partition model determines the initial release of congeners into the environment. Sewage sludge application to pastures or crop land is assumed to be different and these differences affect the behavior of constituents in the environment. The model uses information described above on sewage sludge characteristics (e.g., moisture content and congener concentrations), and environmental setting (e.g., precipitation, temperature, and soil characteristics) to estimate environmental releases.

Fate and transport modeling procedures describe the mechanism by which the congeners move from the source through the environment. As described above, a source partition model was used to determine the amount and nature of congener released from the agricultural field. A multimedia approach was used to characterize the movement of the dioxins through the environment. This approach considered atmospheric concentrations, atmospheric deposition, soil concentrations, and sediment concentrations in potentially impacted water bodies.

Air modeling procedures estimated air concentrations and deposition of vapors and particles on the agricultural farm, onto the buffer area, directly into the surrounding water bodies, and onto the regional watershed. Air dispersion and deposition of vapors and particles were modeled using the Industrial Source Complex Short Term Model. Soil erosion comes from the crop fields and pastures, the buffer area containing the house and chicken yard, and the remaining portion of the watershed. Erosion was modeled using the Universal Soil Loss Equation. All impacts in the same period of time were summed to estimate the concentration in the stream sediment and water column.

The exposure pathways included inhalation of dioxins in ambient air during tilling of agricultural fields, incidental ingestion of soil, ingestion of aboveground and belowground produce (i.e., root crops), ingestion of beef and dairy products, ingestion of eggs and poultry products, and ingestion of fish. EPA's preliminary analysis indicated that exposure to dioxins from the consumption of ground water was insignificant due to the extremely low solubility of dioxins in water and negligible leaching of dioxins to ground water (USEPA, 1999b).

With concentrations of the congeners determined for water and air, the concentrations being delivered to humans from aboveground produce, belowground produce, poultry, eggs, beef, dairy products, and fish were then calculated. This was accomplished using food chain models. The food crops (vegetables, fruits, and root vegetables) were assumed to be grown on the sewage sludge-amended fields, and cattle (beef and dairy) were assumed to be raised on pastures receiving sewage sludge. These processes were modeled using a multi-pathway exposure model and the fate and transport parameters and modeling procedures reflecting the latest scientific knowledge on the fate and transport of dioxin. The exposure pathways considered the transport of constituents from the soil to plants (vegetables, fruits, roots, and pasture grass) and ingestion of these materials by humans and animals. The transport to plants

may occur through the root system, but most occurs through air-to-plant transfer mechanisms. The contaminated plants are in turn consumed by cattle and humans.

The latest scientific knowledge with respect to the methodology of estimating concentration of congeners in beef and/or dairy products is also described in the Draft Dioxin Reassessment document. This methodology has been developed based on the transfer of congeners from the total diet of the cattle into the fat. The method described in the Draft Dioxin Reassessment emphasizes the importance of the differences in diet between beef and dairy cattle in explaining different food concentrations. While the same equation was used for all cattle, whether they are beef cattle or dairy cattle, the differences were in the dietary fraction assumptions. These assumptions were based on how much of the time the cattle are pastured and how much of the time they are confined with supplemental feed. Forage was assumed to be raised on the sewage sludge-amended pasture where the sewage sludge was assumed to remain on the top two centimeters of the soil and to volatilize onto the forage. The soil was assumed to be the soil in the sewage sludge-amended pasture. The supplemental feed for the cattle was assumed to be grown on sewage sludge-amended crop land where the sewage sludge was tilled into the soil. Half of the supplemental feed was assumed to be vegetation and half was assumed to be grains. Supplemental feed was assumed to contain a lower dioxin concentration than forage because it was assumed to contain less volatilized dioxins (due to tilling), and the grain portion was assumed to be free of contamination due to stripping of the outer leaves where dioxins accumulate.

To determine the dioxin concentrations in poultry and eggs, the risk assessment starts with the assumption that sewage sludge is not to be applied directly to the chicken yard. The chickens are assumed to be free range within a confined area of the buffer near the farm residence. The chicken diet is assumed to consist of 90 percent store bought chicken feed (uncontaminated by dioxins in sewage sludge applied on the farm land) and 10 percent buffer soil.

As already indicated, the receptors included in the modeling are adults and children living and working on farms where fruits, vegetables, root crops, and farm animals are raised, and half of these food items consumed by the adults and children living on the farm are produced on the farm. The farm family also is assumed to be exposed to inhalation risks from windblown and tilling emissions from the agricultural field. Soil ingestion risks are also assessed for both adults and children. Children are assumed to ingest soil from the buffer area, and the adult farmer is assumed to ingest soil from the tilled field. In addition, risks to recreational fishers who catch and consume fish from the stream adjacent to the agricultural field is considered and summed with the other exposure pathways on the assumption that farmers are also recreational fishers.

EPA requests comment on the assumptions and values used in this Section to estimate how much dioxins are being transported to individuals in the modeled farm family (e.g., the sources (store-bought versus farm-produced) and dioxin contamination levels of poultry feeds).

G. What Additional Factors Are Applied to Dioxin Concentrations To Determine How Much of the Congeners are Being Ingested or Inhaled by a Farm Family Member?

To determine how much of the congeners adults and children are inhaling and ingesting, exposure factors were applied to the concentrations of the contaminants from air, produce, cattle, dairy, poultry, eggs, and fish. The exposure factors used in this analysis were taken from the Exposure Factors Handbook (USEPA, 1997). The Exposure Factors Handbook summarizes data on human behaviors and characteristics related to human exposure from relevant key studies and provides recommendations and associated confidence estimates on the values of exposure factors.[3]

The proportion of home produced food commodities eaten by highly exposed farm families was assumed to be 50% of their diet for all iterations. This assumption defined the modeled population. Specific distributions of other exposure factors for the general population of farm residents were compiled from the Exposure Factors Handbook. These include ingestion rates for adults and children for aboveground vegetables, root vegetables, fruits, beef, dairy products, poultry, and eggs. Distributions have been developed for adults and for three age groups of children for these dietary categories.

Exposure factors are related to the pathways in that they describe the rates at which dioxin doses are ingested or inhaled from the various sources noted above (e.g., air, soil, beef, and diary, by the highly exposed farm family adults and children). The exposure factors used in this risk assessment are represented by a distribution or a fixed value in the Monte Carlo probabilistic analysis.

For the probabilistic exposure analysis, probability distribution functions were developed from the values in the Exposure Factors Handbook. The intake factors, for which either single values or distributions were used from the Exposure Factors Handbook, are: soil ingestion (one value for children aged 1 to 6 and another value for all other receptors); and fruits and vegetables ingestion, beef and dairy ingestion, fish ingestion, and inhalation rates (all of which are distributions of values.)

H. How Did EPA Calculate the Range of Exposure Levels?

For cancer effects, where the biological response is described in terms of lifetime probabilities, dose is presented as a ''lifetime average daily dose'' (LADD). Because exposure duration varies from person to person (i.e., may not occur over the entire lifetime), calculation of exposure produces a distribution of exposure levels (or doses). In addition to exposure duration, the LADD takes a number of variable factors into account, including when exposure begins, how often and in what amounts sewage sludge is applied to the land, and the length of time over which land application occurs. For this risk assessment, the LADD takes into account: (1) A distribution of randomly selected times when land application begins, i.e., either when the highly exposed farm family begins applying sewage sludge to their land or moves onto a farm where sewage is being or has been applied; (2) a distribution of exposure durations ranging from one year to 70 years;[4] (3) a distribution of sewage sludge application duration, ranging from a minimum of one year up to a maximum of 40 years (i.e., a minimum of one application to a

[3] EPA carefully reviewed and evaluated the quality of the data before their inclusion in the Exposure Factors Handbook. EPA's evaluation criteria included peer review, reproducibility, pertinence to the United States, currency, adequacy of the data collection period, validity of the approach, representativeness of the population being modeled (in this case, farm families), characterization of the variability, lack of bias in study design, and measurement error (USEPA, 1997).

[4] Exposure durations representing the residence time in the same house were also determined using the Exposure Factors Handbook. The lifetime of the individual was assumed to be a fixed value of 70 years. A fixed value for exposure frequency was assumed to be 350 days per year, accounting for two weeks away from the farm for vacation (USEPA, 2002b). These single values were selected to be protective and yet representative of realistic scenarios.

maximum of 20 applications based on a fixed application frequency of once every two years), and (4) a distribution of sewage sludge application rates (i.e., amount of sludge applied to the land) ranging from 5–10 metric tons per hectare per application. The LADD also includes doses from each exposure route (i.e., inhalation and ingestion) and body weight. A distribution of body weights for the adult and child were taken from the Exposure Factors Handbook.

The purpose of the exposure assessment is to estimate the dose to an exposed individual by combining media intake estimates with media concentrations. Estimates of exposure are based on the potential dose (e.g., the dose ingested or inhaled) rather than the applied dose (e.g., the dose delivered to the gastrointestinal tract) or the internal dose (e.g., the dose delivered to the target organ). Doses from individual pathways (e.g., soil, exposed vegetables) were calculated by multiplying the contaminant concentration in the food product or other exposure media (e.g., air or soil) by the respective intake rate on a per kilogram body weight basis. Doses received from the various ingestion pathways (e.g., soil and food) were then summed over the period of time in which exposure occurs, resulting in an average daily dose received from ingestion exposure.

I. How Was Childhood and Infant Exposure Evaluated in the Exposure Analysis?

Children are an important sub-population to consider in a risk assessment because they may be more highly exposed than adults; compared to adults, children may eat more food and drink more fluids per unit of body weight. This higher intake-rate-to-body-weight ratio can result in a higher average daily dose of dioxins than adults experience. The risk assessment performed for sewage sludge application to agricultural land includes an analysis of exposures to 3,000 individuals whose exposures begin in childhood. To account for intake rates varying over different childhood age groups, parameters characterizing exposures beginning in childhood were developed.

The first step in developing the time-weighted parameters is to define the start age for the child and the length of exposure for that individual. These two values then determine how long the individual is in each age group. Four age groups were defined as follows: age group 1 (1–5 years of age); age group 2 (6–11 years of age); age group 3 (12–19 years of age); and age group 4 (over 20 years of age). After the individual is defined, age appropriate consumption rates are chosen for each age group which are selected from the age specific consumption rate distribution for each item considered in the analysis. For example if the exposure begins at age 3 and continues for 20 years, a consumption rate for each age group was selected and weighted to represent the number of years spent in each age group to get an average intake rate for the entire exposure duration of 20 years (i.e., age group 1= 3 years of exposure; age group 2 = 6 years; age group 3 = 7 years; and age group 4 = 4 years, for a total of 20 years exposure.) This time weighted intake rate is then used with the average concentration of dioxins for the food item over the entire exposure duration, to yield an average daily dose.

Infants are also an important sub-population to consider in this risk assessment because they may be exposed to dioxin-like compounds via the ingestion of breast milk. While risks to children and adults were integrated to incorporate individuals for whom exposure first occurs during childhood but continues into adulthood, the lifetime risks to infants were calculated separately from the risks to older children (i.e., ages 1 year or older) and adults. For infants, exposure during the first year of life was averaged over an expected lifetime of seventy years to derive a LADD that was then used to calculate risk. The ''lifetime'' risk to infants thus should be thought of as the contribution to lifetime risk that occurs during the first year of life through ingestion of breast milk for individuals born into a farm family exposed to dioxins from land-applied sewage sludge.

J. How Was the Cancer Risk Estimate Calculated?

Cancer risk is calculated using lifetime excess cancer risk estimates to represent the excess probability of developing cancer over a lifetime as a result of exposure to the constituent of interest. Lifetime excess cancer risk estimates are the product of the lifetime average daily dose for each of the four types of individuals exposed to dioxin and for each exposure pathway, and the corresponding cancer slope factor.

The exposure assessment estimates delivered doses for each of the 29 congeners to a farm family individual. Each of these congener doses were then converted to TEQ doses by multiplying each congener dose by its TEF. These TEQ doses for each of the 29 congeners were then summed to yield an overall TEQ dose to the individual for that exposure pathway (e.g., inhalation or ingestion). Finally this TEQ dose was multiplied by the cancer slope factor to estimate the excess cancer risk to the individual for that pathway of exposure.

Using all samples from the EPA 2001 dioxin update survey, the estimated risks and corresponding daily exposure to dioxins for the highly exposed farm adult and child are given below in Table 5 for various percentiles of exposure within this population. ''Adult'' means individuals whose exposure begins when they are adults, and ''child'' means individuals whose exposure begins when they are children. In most cases exposure which begins during childhood also ends during childhood. However, in some instances, exposures which begin when individuals are children continued into their adult years.

Additional risk calculations were performed to estimate the impact on the risk if sewage sludge with 300 ppt TEQ dioxin and 100 ppt TEQ dioxin were restricted from being land applied. Eliminating sewage sludge samples with higher concentrations of dioxins did not change the estimated risk. The distribution of risk estimates for scenarios excluding samples with dioxin concentrations greater than 300 ppt TEQ and 100 ppt TEQ are the same as the distribution below shown in Table 5, which includes data from all sewage sludge samples.

TABLE 5.—RISKS AND DAILY EXPOSURE FOR HIGHLY EXPOSED FARM ADULT AND CHILD FOR ALL EXPOSURE PATHWAYS—($Q^*=1.56 \times 10^{-4}$/PG TEQ/kg-d)

Percentile	Adult *		Child **	
	Risk	Daily Exposure pg TEQ/kg-d	Risk	Daily Exposure, pg TEQ/kg-d
50th	1×10^{-6}	7.3	1×10^{-6}	7.3
75th	4×10^{-6}	7.3	3×10^{-6}	7.3
90th	1×10^{-5}	7.3	7×10^{-6}	7.3
95th	2×10^{-5}	7.3	1×10^{-5}	7.3
99th	4×10^{-5}	7.3	2×10^{-5}	7.3

* Initial exposure begins when the individual is an adult.
** Initial exposure begins when the individual is a child.

K. How Did EPA Analyze the Relative Importance of Inputs to the Risk Model?

In addition to the revised risk assessment, EPA conducted a sensitivity analysis to identify the effects of variability and uncertainty in the risk model on the risk estimates. These steps are performed on the inputs and outputs of the Monte Carlo analysis. In the Monte Carlo analysis, probability distributions were assumed for each of the variable input parameters, and a distribution of 3,000 media concentrations and risk results were generated as outputs in the analysis. In the sensitivity analysis, statistical methods were applied to this sample of inputs and outputs to evaluate the influence of the individual inputs on the model outputs. Several different indices of sensitivity were derived from the simulated sample to quantify the influence of the inputs and identify the most influential parameters. Finally, a regression analysis was applied to a linear equation to estimate the relative change in the output of a Monte Carlo simulation relative to the changes in the input parameters.

Table 6 presents the results of the sensitivity analysis for the beef and dairy products exposure pathways. The consumption of beef and dairy products by the farm family represent over 90 percent of dioxin exposure and subsequent cancer risk associated with land application of sewage sludge. For the beef products pathway, exposure duration and beef consumption rate combine to account for 86 percent of the variation in the estimation of dioxin exposure. The two variables which account for the next highest contributions to variation in the estimation of exposure (i.e., sewage sludge application rate and average year that the farm family moves in) combined for 2 percent of the variation. Similarly, for dairy products, exposure duration and dairy products consumption rate also represent 86 percent of the variation in the estimation of exposure, with the next two highest variables again representing a combined 2 percent of the variation. A detailed discussion of the entire sensitivity analysis can be found in the land application risk assessment Technical Background Document (USEPA, 2002b).

TABLE 6.—RESULTS OF SENSITIVITY ANALYSIS

Pathway and Sensitivity variables	Percent of risk accounted for by variable
Beef:	
Exposure Duration	60
Consumption Rate	26
Sewage sludge Application Rate.	1
Average year that the farm family moves in.	1
Dairy products:	
Exposure Duration	54
Consumption Rate	32
Average year that the farm family moves in.	1
Sewage sludge Application rate.	1

L. How Does EPA Characterize the Risk?

As previously noted, EPA developed a revised risk assessment using a probabilistic approach as a basis for the Agency final action on development of a numerical standard for dioxins in sewage sludge applied to agricultural land. In order to protect the general public from adverse health impacts from dioxins in land-applied sewage sludge with an adequate margin of safety, the risk assessment calculates the risk to the most highly exposed population (i.e., a farm family consuming 50 percent of their diet from products grown on sewage sludge amended soil) . The following discussion characterizes the key elements of EPA's risk assessment and compares them according to the principles in EPA's guidance for exposure assessment and for risk characterization (USEPA, 1992 and USEPA, 2000b).

Approximately 95 percent of the U.S. population's exposure to dioxins results from the consumption of animal products in the diet where dioxin is concentrated in the fatty portion of the meats and dairy products (USEPA, 2000a. See Part I, Vol. 3, Chap. 3.). EPA chose the farm family as the highly exposed population to be modeled, using a key assumption that their diets have significant percentages of meat and dairy products from their own farms where sewage sludge is land applied as a fertilizer or soil amendment. Members of such a farm family are at greater risk from exposure to dioxins associated with land application as compared with the overall U.S. population because their diets would be based on products from their farm. As previously noted, a decision that is protective of this highly exposed modeled population is thus protective of the general population from the same pathways of dioxin exposure with a greater margin of safety since the diet of the general population contains only a small fraction of meat and dairy products grown on farms with land-applied sewage sludge.

The following discussion characterizes the three principal components of the risk assessment: the exposure scenario; key assumptions and data used in the exposure assessment modeling; and the cancer slope factor (Q1* or potency factor). Each of these components is characterized as either ''high end'' or ''central tendency.''

As previously noted, sewage sludge is assumed to be applied at agronomic rates to tilled crop land used for the production of vegetables, fruits, and root crops, and to pasture land which is not tilled. Fifty percent of the farm family's agricultural land is assumed to be tilled crop land and the other fifty percent untilled pasture. An important assumption in terms of characterizing the risk is that the dioxin in each

application of sewage sludge to pasture is assumed to permanently remain in the top two centimeters of the land surface and is not diluted over time. This is a key assumption since volatilization from soil to the leaf surfaces of crops consumed by animals and humans is the principal mechanism by which dioxins are transported from sewage sludge applied to the land. This assumption predicts a maximum amount of transport of dioxins for subsequent consumption by pastured animals. In addition, this pasturing scenario is not varied; EPA assumes that the farmer does not rotate the pasture to grow row crops where tilling of sewage sludge in the soil would mitigate dioxin volatilization transport. Thus, this assumption is likely to contribute to an overestimation of risk.

Another important assumption contributing to the risk estimate is that the family is simultaneously exposed to a combination of agricultural products produced on the farm. For the purpose of the exposure assessment and risk assessment, all pathways of exposure to dioxins are summed.

As previously noted, the cancer slope factor used in the revised risk assessment is 1.56×10^{-4}/pg TEQ/kg–d. This value is characterized as the upper bound (i.e., at the 95th percentile confidence level) on the slope of the dose-response curve in the low-dose region and is generally assumed to be linear. Use of upper bound slope factors also results in calculation of high-end risks of cancer for individuals in the target population of highly exposed farm families (i.e., 95% likelihood that risk to such highly exposed individuals is lower) (USEPA, 2000a. See Part III, Chap. 6).

As described above in the description of the risk assessment, most of the parameters used in the Monte Carlo simulations were distributions of a range of observed values for each parameter. Where a range of data was not available, ''fixed'' data points or assumptions were used. The sources of information for the fixed point inputs necessary to conduct the risk assessment include the EPA Exposure Factors Handbook (USEPA, 1997), peer reviewed scientific literature, and other assumptions specifically related to land application of sewage sludge based on actual practice.

The following is a listing of some of the key fixed parameters used in the Monte Carlo simulations and their characterizations. Some of the fixed assumptions characterized as ''high end'' have the greatest impact on the risk estimate based on the results of the sensitivity analysis discussed above (see Section VI.K.). These assumptions include the farm family simultaneously exposed to multiple pathways including a certain percentage of their own products; dioxin remaining in the top two centimeters on pasture lands; and the upper bound Q1*. The following ''fixed'' parameters are important to note, but have a lesser impact on the risk estimate.

Other ''High End'' Assumptions

- Exposure Frequency—350 days per year.
- Fraction of diet for home-caught fish—100%.
- Fraction of soil ingested that is contaminated—100%.
- Fraction of ingested dioxin absorbed by the mother—100%.
- Use of potential dose rather than applied or internal dose.

Mean or Central Tendency Values from EPA Exposure Factors Handbook

- Fraction of food preparation loss for exposed fruit, exposed vegetables, and root vegetables.
- Percent cooking and percent post-cooking loss for beef and poultry.
- Fraction of home-caught fish that are at trophic levels 3 and 4 (high dioxin bio-accumulating fish).
- Soil ingestion rates for children and adults.

Values from Scientific Literature [5]

- Biological half life of dioxin in lactating women.
- Concentration of dioxin in aqueous phase of maternal milk.
- Fraction of fat in maternal breast milk. (mean value)
- Fraction of ingested dioxin absorbed by the infant.
- Fraction of mother's weight that is fat. (mean value)
- Proportion of dioxin stored in maternal fat.

The probabilistic methodology facilitates risk estimates for individuals in any percentile of the assessed population. The revised land application risk assessment reports high-end estimates of risks for individuals at the 50th, 75th, 90th, 95th and 99th percentiles of exposure within the population defined for this analysis as ''highly exposed.'' USEPA, 2002b. It may also be acceptable to characterize the risk assessment as the ''high end of the high end'' within this modeled population of highly exposed farm families.

[5] USEPA, 1998a. Methodology for Assessing Health Risks Associated with Multiple Pathways of Exposure To Combustor Emissions. These values were gathered from various sources and are either mean values or representative ranges (not high end).

The incremental cancer risk for land application of sewage sludge was estimated considering all exposure pathways for three scenarios: baseline (all samples from the EPA 2001 dioxin update survey); 300 ppt TEQ cutoff (samples greater than 300 ppt TEQ excluded); and 100 ppt TEQ cutoff (samples greater than 100 ppt TEQ excluded). The estimated lifetime risks for adults using this cancer slope factor range from 4×10^{-5} at the 99th percentile to 1×10^{-6} at the 50th percentile for multi-pathway exposure to dioxins through land-applied sewage sludge (see Table 5). (As indicated in Table 5, the estimated risks for children are less than or equal to the estimated risks for adults.) No quantifiable decrease in risk is calculated if sewage sludge with greater than 300 ppt TEQ dioxins or greater than 100 ppt TEQ dioxins were restricted from being land applied. The reason that the estimated risk does not decrease when sewage sludge limits of 300 ppt TEQ dioxins or 100 ppt TEQ dioxins are assumed is that, based on the representative sampling, there is so little sewage sludge that contains dioxin at or above these concentrations.

Continual application of sewage sludge with significantly higher concentrations of dioxins than currently measured would be necessary to predict quantifiable increases in risk. However, comparison of data from the 1988 NSSS (USEPA, 1990) and the EPA 2001 dioxin update survey (USEPA, 2002a) indicate that ''spikes'' (i.e., higher concentrations) of dioxins in sewage sludge appear to be transient. Specifically, all ten sewage sludge samples with the highest concentrations of dioxins and furans measured in the 1988 Survey (concentrations ranging from 97 ppt TEQ to 827 ppt TEQ) had greatly reduced concentrations of dioxins and furans in the 2001 dioxin update survey (concentrations ranging from 2 ppt TEQ to 53 ppt TEQ) (USEPA, 1990 and USEPA, 2002a). Conversely, the four sewage sludge samples with the highest concentrations of dioxins and furans measured in the 2001 dioxin update survey (concentrations ranging from 93 ppt TEQ to 682 ppt TEQ) had markedly lower concentrations of dioxins and furans in the 1988 Survey (concentrations ranging from 2 ppt TEQ to 41 ppt TEQ) (USEPA, 2002a and USEPA, 1990).

[**Note:** These comparisons are based on dioxin and furan concentrations since only dioxins and furans were measured in the 1988 Survey.] Thus, it is highly unlikely that a single family would be exposed to one of these sewage sludges with a high

concentration of dioxin long enough to produce a quantifiable increase in risk.

Finally, the Agency calculated the maximum number of cancer cases in the highly exposed population that could be predicted from exposure to dioxins in land applied sewage sludge (USEPA, 2002c). To make this calculation the Agency used data from the EPA Exposure Factors Handbook (USEPA, 1997) that indicates that 2 percent of the United States population are in farm families whose diets consist of 50 percent of products produced on their own farm (5.6 million people). The Agency then estimated the maximum percentage of farmland to which sewage sludge could be applied annually is 0.2 percent. This estimate was derived by dividing the amount of farmland which could receive sewage sludge if all 8 million metric tons of sewage sludge produced annually in the United States (USEPA, 1999c) were land-applied at an agronomic rate of 10 metric tons/hectare (800,000 hectares) by the total amount of farmland in the United States (377 million hectares; USDA, 1997). On this basis EPA estimates that the highly exposed farm family population is no greater than 11,000 (i.e., 0.2% of the 5.6 million people whose diets consist of 50% percent of products produced on their own farm). The number of lifetime cancer cases is estimated by multiplying the risk by the number of individuals in the modeled population. The estimated lifetime cancer cases for the modeled population is 0.224 if the 95th percentile adult risk from land application of sewage sludge (2×10^{-5}, see Table 5) is used for this calculation, and 0.112 using the 90th percentile adult risk (1×10^{-5}, see Table 5). The number of annual cases is estimated by dividing the lifetime cancer cases by 70 years of exposure. The estimated annual cancer cases is 0.006 if the 99th percentile adult risk is assumed, 0.003 if the 95th percentile adult risk is assumed, and 0.002 if the 90th percentile adult risk is assumed.

EPA requests comments on the Agency's characterization of the key elements of the revised land application risk assessment. EPA will consider these comments to characterize the overall estimate of risk to the modeled population.

VII. What Are the Implications of EPA's Dioxin Reassessment Process for This Rulemaking?

Since 1991 EPA has been conducting a scientific reassessment of the health risks of exposure to dioxin and dioxin-like compounds. EPA began this task in light of significant advances in the Agency's scientific understanding of mechanisms of dioxin toxicity, significant new studies of dioxin's carcinogenic potential in humans, and increased evidence of other adverse health effects. These efforts have included the involvement of outside scientists as principal authors of several chapters, frequent public meetings to report progress and take public comment, and publication of early drafts for public comment and peer review. The review process for the Dioxin Reassessment has also involved extensive use of outside scientists from other federal agencies and the general scientific community.

As previously stated, aspects of the Agency's Draft Dioxin Reassessment that are considered state of the science or the best available information about dioxin have been incorporated into the revised exposure analysis and risk assessment for dioxins in land-applied sewage sludge. (See Section VI.D. of this Notice). However, the Agency has not finalized its policy and/or factual conclusions with respect to other aspects of the Draft Dioxin Reassessment, and any decisions on these policy and factual conclusions made in part as a result of the Dioxin Reassessment could affect the sewage sludge land application exposure analysis and risk assessment, and therefore could affect the Agency's decisions with respect to this rulemaking. Therefore, EPA is seeking comment on the implications of this information in the event that, prior to taking final action on the Round Two rule, EPA finalizes a cancer slope factor, an approach to assessing risk of non-cancer health effects from dioxins, or other aspects of the current Draft Dioxin Reassessment. If EPA issues a final Dioxin Reassessment that is substantially similar to the current draft as discussed in this Notice, EPA does not expect to provide further notice and opportunity for public comment with respect to the effect of the Dioxin Reassessment on this rulemaking. The following is a brief summary of the EPA Dioxin Reassessment process, and a discussion of how the Agency may integrate key decisions on dioxins policy resulting from the Dioxin Reassessment into the Round Two rulemaking.

EPA first released the external review drafts of the Dioxin Reassessment health effects and exposure documents in September 1994 (USEPA 1994a). The Agency took public comment on the drafts, followed by the Agency's Science Advisory Board (SAB) review of the Draft Dioxin Reassessment in May 1995. The documents were revised based on these reviews and were again released for external peer review. EPA made additional revisions to the documents based on the external peer review and submitted them once again to the SAB. After a public meeting on May 15, 2001, the SAB's Executive Committee endorsed a review report of the Draft Dioxin Reassessment contingent upon changes to address some of the differing scientific opinions raised in the review report.

Based on the overall endorsement of the content of the Draft Dioxin Reassessment by the SAB, EPA used many aspects of the Reassessment in the revised Part 503 exposure analysis and risk assessment. These include the TEQ approach based on the toxicity of 2,3,7,8-TCDD, the use of the current WHO_{98} TEQs, and the numerous physical, chemical, occurrence, and exposure factors used in the Dioxin Reassessment to evaluate and characterize human health risks from dioxins.

Two of the key areas which the SAB identified as having differing scientific opinions are the cancer slope factor for 2,3,7,8-TCDD and the use of a margin of exposure (MOE) approach to evaluate the likelihood that non-cancer effects may occur in the human population at environmental exposure levels. The Draft 2000 Dioxin Reassessment notes that, while major uncertainties remain, efforts to bring more data into the evaluation of cancer potency have resulted in an estimate of 1×10^{-3}/pg TEQ/kg-d. According to the Draft 2000 Dioxin Reassessment, this cancer slope factor represents a plausible upper bound on risk based on evaluation of human and animal data. These values are approximately six times higher than previous estimates (USEPA, 1985 and USEPA, 1994a) which were based on fewer data. However, the EPA SAB panel was not able to reach consensus on a single value for a dioxin potency factor. The SAB panel cited differences of opinion on the adequacy of data and modeling approaches and assumptions as their reasons for not reaching consensus on a dioxin cancer slope factor.

The revised Round Two land application risk assessment uses the cancer slope factor currently used by EPA in risk assessments (USEPA, 1994a). If EPA adopts a different cancer slope factor for assessing the risk of cancer from dioxin prior to taking final action on the proposed Round Two rule, EPA will evaluate the risk of cancer from land-applied sewage sludge using any such revised cancer slope factor. Similarly, to the extent EPA adopts a policy regarding risks of non-cancer health effects from dioxin prior to the

final decision on the proposed Round Two rule, the Agency will evaluate non-cancer effects associated with dioxins in land-applied sewage sludge using any such policy.

In order to give the public an opportunity to understand and comment on how the particular approaches contained in the Draft Dioxin Reassessment could potentially affect the proposed Round Two rulemaking, EPA is presenting a discussion of the potential impacts of the revised cancer slope factor and approaches for estimating non-cancer effects contained in the Draft Dioxin Reassessment on EPA's revised land application risk assessment. This includes a discussion of background exposures and risks based on information in the Draft Dioxin Reassessment, such as existing body burden, although EPA has not made a final decision regarding these findings or adopted any policy with respect to regulating dioxins in light of background exposures and existing body burden.

A. How Would the Dioxin Cancer Risk from Land Application Compare to Background Dioxin Cancer Risk?

Dioxin and dioxin-like compounds always exist in nature as complex mixtures. These compounds can be quantified in environmental media and their potential effects assessed as a mixture. As previously noted, the contribution of the other ''dioxin-like'' compounds is quantified by treating each as having a defined ''toxicity equivalence'' to dioxin (toxicity equivalent factor, TEF). The TEQ concentration is calculated by multiplying the concentration of each congener in the sewage sludge by its corresponding TEF, and then summing the resulting products from this calculation for all 29 congeners.

The significance of the incremental exposure and risk due to a specific source such as land application of sewage sludge is best understood by discussing it in the context of general population background exposure to dioxins. The fact that background exposures and body burden of dioxins are currently high for the general population means that any incremental exposure from a particular source needs to be considered in context of its contribution to overall risk. The following is a comparison of the dioxin cancer risk the EPA calculated from the Agency's revised risk assessment to the background dioxin cancer risk estimated from the Agency's 2000 Draft Dioxin Reassessment. This comparison considers both the current cancer slope factor the Agency has been using since 1985 and the revised cancer slope factor contained in EPA's 2000 Draft Dioxin Reassessment.

The revised risk assessment for land application of sewage sludge uses the current cancer slope factor of 1.56×10^{-4}/pg TEQ/kg–d. The estimated upper bound lifetime risks for highly exposed farm family adults using this cancer slope factor range from 4×10^{-5} at the 99th percentile to 1×10^{-6} at the 50th percentile for multi-pathway exposure to dioxins through land-applied sewage sludge (see Table 5). As indicated in Table 5, the estimated risks for children are less than or equal to the estimated risks for adults. These risks correspond to an estimated daily exposures (adult) ranging from 0.3 pg TEQ/kg–d at the 99th percentile to 0.006 pg TEQ/kg–d at the 50th percentile. Use of the 1×10^{-3}/pg TEQ/kg–d cancer slope factor being considered in the 2000 Draft Dioxin Reassessment would result in estimated high-end multi-pathway lifetime risks for highly exposed farm family adults ranging from 2.4×10^{-4} at the 99th percentile to 6×10^{-6} at the 50th percentile (see Table 7, below). These estimated risks using a 1×10^{-3}/pg TEQ/kg–d cancer slope factor are based on the same daily exposures indicated in Table 5. Again, the estimated risks for children would be less than or equal to the estimated risks for adults (see table 7).

TABLE 7.—RISKS FOR HIGHLY EXPOSED FARM ADULT AND CHILD FOR ALL EXPOSURE PATHWAYS—($Q^*=1 \times 10^{-3}$ PG TEQ/kg=d)

Percentile	Adult*	Child**
50th	6×10^{-6}	6×10^{-6}
75th	2×10^{-5}	2×10^{-5}
90th	6×10^{-5}	4×10^{-5}
95th	1×10^{-4}	6×10^{-5}
99th	2×10^{-4}	1×10^{-4}

*Initial exposure begins when the individual is an adult.

**Initial exposure begins when the individual is a child.

For this comparison EPA considered ''background risk'' to be the upper bound risk for the general population. Using the current cancer slope factor of 1.56×10^{-4}/pg TEQ/kg–d and current body burden and exposure levels, the background risk for the general population is estimated to be approximately 1×10^{-4}. By comparison, EPA's 2000 Draft Dioxin Reassessment estimates that the upper bound risk for the general population exceeds 1×10^{-3} using a revised cancer slope factor of 1×10^{-3}/pg TEQ/kg–d. Note that actual risks for individuals are a function primarily of dietary habits and could be higher or lower. Thus, high-end incremental risk estimates for highly exposed farm families from land application of sewage sludge are approximately an order of magnitude (i.e., ten times) lower than background risks for the general population.

These risk calculations are a function of dioxin TEQ dietary intake. Adult daily intakes of dioxins, furans and coplanar PCBs are estimated to average 65 picograms toxic equivalents per day (pg TEQ/day) from all sources for the general population. By comparison, land application of sewage sludge results in an estimated incremental intake for a highly exposed adult farmer of 0.45 pg TEQ/day at the 50th percentile of exposure; 1.7 pg TEQ/day at the 75th percentile; 4.5 pg TEQ/day at the 90th percentile; 9.1 pg TEQ/day at the 95th percentile; and 19.6 pg TEQ/day at the 99th percentile. These estimates of total intake of dioxin for highly exposed adult farmers are calculated by multiplying the estimated daily exposures from land application of sewage sludge (in pg TEQ/kg–d; see Table 5) by an assumed adult body weight of 70 kg.

B. How Would the Non-Cancer Dioxin Risk from Land Application Compare to Background Non-Cancer Dioxin Risk?

EPA traditionally uses a ''reference dose'' (RfD) for evaluating the potential for non-cancer effects for an incremental exposure that results from a specific source of contamination. The RfD is an estimate of a daily oral exposure to the human population that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. RfDs for a particular contaminant are a useful health benchmark when background exposures are low or nonexistent. Background exposures for dioxin-like compounds have been quantified by EPA as being in the range of 1 pg TEQ/kg body weight-day for adults. On a body burden basis, the background exposure for adults in the United States has been quantified at 5 ng TEQ/kg whole weight basis (USEPA, 2000a. See Part I, Vol. 3, Chap. 4.). The Draft Dioxin Reassessment concluded that traditional approaches for setting an RfD would result in an RfD for dioxin TEQs that is likely to be substantially below current background intakes. For this reason, EPA believes that establishment of an RfD that is below typical background exposures is uninformative in judging the significance of incremental exposures. Consequently, EPA has not developed an RfD in the Draft Dioxin Reassessment (USEPA, 2000a. See Part III, Chap. 6.)

Instead, the Draft Dioxin Reassessment promotes the concept of evaluating an incremental percentage increase over background approach for assessing potential non-cancer risk. There are two approaches to evaluating the incremental percent increase. One is based on dose or intake, and the second is based on body burden. The Draft Dioxin Reassessment states that body burden, rather than daily dose, is a more appropriate metric for quantifying risks of cancer as well as non-cancer health effects. For long-term exposures to a steady dose (i.e., 15–20 years or more), dose and body burden are correlated since the body burden will tend to approach a steady state with long term steady exposures. However, a short term change in dose will not result in the same relative change in body burden. For example, a short term elevated exposure to dioxin, say an exposure ten times higher on average for one year, will not result in a proportional increase in body burden, a ten-fold increase in body burden in this example. However, over long periods of time, 20 years or more for example, a ten-fold increase in an average dose will result in a ten-fold increase in body burden.

High-end incremental dioxin body burdens to the modeled highly exposed farm population associated with land application of sewage sludge are estimated to be 0.019 ng TEQ/kg body weight at the 50th percentile of exposure, 0.072 ng TEQ/kg body weight at the 75th percentile of exposure, 0.19 ng TEQ/kg body weight at the 90th percentile of exposure, 0.39 ng TEQ/kg body weight at the 95th percentile of exposure, and 0.84 ng TEQ/kg body weight at the 99th percentile of exposure (Lorber 2002). These body burden estimates are based on the estimated daily exposure from land application of sewage sludge for highly exposed adult farmers (see Table 5) and an assumed exposure time of at least 20 years. As described in the Draft Dioxin Reassessment, the general population body burden spans a range of younger to older adults. Evidence clearly indicates that older individuals have body burdens that are higher than younger individuals, mainly because of much higher exposures in past decades. The average body burden of younger adults is more likely to be approximately 3 ng TEQ/kg body weight, while the body burden of older adults would be higher than the overall population average of 5 ng TEQ/kg body weight. Women of childbearing age, a population of concern, would more likely have body burdens in the range of 3 ng TEQ/kg body weight. (USEPA, 2000a. See Part I, Vol. 3, Chap. 6.). Using this background body burden and the high-end incremental exposures associated with land application of sewage sludge, the percentage increases in body burdens of dioxins for highly exposed adult farmers from land application of sewage sludge are estimated to be 0.6 percent at the 50th percentile of this modeled population, 2 percent at the 75th percentile, 6 percent at the 90th percentile,13 percent at the 95th percentile and 28 percent at the 99th percentile.

VIII. What Is EPA's Assessment of Effects on Ecological Species?

A. What Approach Did EPA Use for the Screening Ecological Risk Analysis of Dioxins in Land-Applied Sewage Sludge?

In response to public and peer review comments EPA performed a screening ecological risk analysis (SERA) since the December 1999 Round Two proposal. The SERA uses a two-phased approach that includes (1) an initial bounding estimate to assess the upper bound potential for ecological effects at a high-end of exposure and (2) a deterministic assessment focused on representative ecological receptors.

The risk measurement chosen for this SERA is the hazard quotient (HQ), the ratio of the exposure (in dose or concentration) to an ecological benchmark. Media concentrations (e.g., sediment, soil) from the human health risk assessment modeling simulations were used to predict exposure doses, and HQs were calculated on a dioxin TEQ basis. Calculation of HQs has a binary outcome: either the chemical concentration (or dose) is below the protective ecological benchmark (HQ<1), or it is equal to or greater than the benchmark (HQ≥1). Given the assumptions and data inputs for each stage, the HQ results are presumed to progress from highly uncertain and highly conservative in the first phase to somewhat less conservative and more certain in the second phase.

Screening-level ecological risk assessments are designed to provide, for those chemicals and receptors that pass the screen, a high level of confidence that there is a low probability of adverse effects to ecological receptors (U.S. EPA, 2001c). The SERA was not designed or intended to provide definitive estimates of risk; rather, the SERA provides insight into the potential for ecological risk. The SERA was designed to be consistent with EPA's Guidelines for Ecological Risk Assessment (USEPA, 1998b).

B. How Did EPA Conduct the Screening Ecological Risk Analysis?

The screening ecological risk analysis addresses the 29 dioxin congeners modeled in ''Exposure Analysis for Dioxins, Dibenzofurans, and Coplanar Polychlorinated Biphenyls in Sewage Sludge'' (USEPA, 2002b) and was based on media concentrations generated in that assessment.

The analysis phase of the SERA began with a highly conservative approach to determine whether any of the habitats, receptor categories, and exposure routes might be of concern. The second phase consisted of more refined deterministic analyses based on somewhat more representative exposure scenarios. Both phases predicted exposure doses and compared those estimates to ecological benchmarks (i.e., the HQ). HQs greater than 1 in the first phase analysis indicated that a more refined analysis was needed to determine whether ecological effects are expected.

The exposure estimates were derived from modeled media concentrations generated in the human health risk assessment (USEPA, 2002b). For the SERA, annual soil, sediment, and surface water concentrations were used as the basis for estimating exposure in all phases of the analysis. Thus, the SERA inherently assumes a one-year exposure duration for ecological receptors. The model calculates average annual exposures. We use these values as high end representations of exposures over the lifetimes of the evaluated receptors.

Table 8 compares the values and assumptions used in each phase of the analysis.

TABLE 8.—VALUES AND ASSUMPTIONS FOR THE SCREENING ECOLOGICAL RISK ANALYSIS

Parameter	Phase 1—High end exposures	Phase 2—deterministic exposures
Cogeners addressed	All	All.
Receptors	Four highly exposed mammals and birds	35 representative mammals and birds.
Dietary composition	Diets reflecting maximum exposure	Representative diets.
Biouptake factors	Fixed values.	Fixed values

TABLE 8.—VALUES AND ASSUMPTIONS FOR THE SCREENING ECOLOGICAL RISK ANALYSIS—Continued

Parameter	Phase 1—High end exposures	Phase 2—deterministic exposures
Percent of diet taken from contaminated area	100%	100%.
Ecological benchmarks	NOAELs	Maximum allowable toxicant level, calculated as the geometric means of the NOAELs and LOAELs.
Media concentrations used to estimate exposure.	50th and 90th percentiles and maximum for sewage sludge.	90th percentile for modeled concentrations in environmental media.

The exposure scenarios considered in the SERA include the agricultural application of sewage sludge in crop fields and pastures, silvicultural application, and application to reclaimed lands. However, only the agricultural application in crop fields and pastures was assessed quantitatively; the other scenarios were addressed qualitatively through comparison with agricultural application. For agricultural application, the SERA addressed two types of habitats. The first habitat consisted of receptors feeding and foraging in the agricultural fields where sewage sludge is applied (i.e., terrestrial habitat). These receptors are terrestrial vertebrates that eat the crops and pasture vegetation (e.g., the white-tailed deer), or that eat small birds and mammals that live and feed in the fields (e.g., the red fox). In addition, the agricultural field includes soil invertebrates that are exposed through direct contact with the land-applied sewage sludge.

The second type of habitat consisted of receptors exposed through living in or feeding from nearby surface water bodies that receive dioxin loads through runoff (i.e., waterbody margin habitat). Aquatic species, such as fish and aquatic invertebrates, were assumed to be exposed through direct contact with dioxins in water and sediment and through ingesting sediment and aquatic prey items. Terrestrial species, such as the raccoon or the osprey, were assumed to be exposed when they eat aquatic prey, such as fish, mussels, and snails from contaminated water bodies.

Exposure in both of these habitat types was based on the common characteristics of terrestrial and waterbody margin habitats, respectively. Exposure in waterbody margin habitats is influenced by variables such as water body size, position in the landscape, water flow rate, bed sediment composition, periodicity of flood events, and the presence of aquatic vegetation. Exposure in terrestrial systems is dependent upon many important factors such as regional location, vegetative cover type, wildlife community structure, and adequacy of food sources. While the generalized representative habitats are a simplification of exposure scenarios, they capture the basic elements characteristic of most terrestrial and waterbody margin habitats. The use of generalized terrestrial and waterbody margin habitats provided a screening-level context for this analysis.

Given the generalized habitat types for the SERA, the exposed ecological species were selected based on the following criteria: (1) Represent all trophic levels and relevant feeding guilds (e.g., herbivores, carnivores), (2) represent receptors with the potential to be highly exposed to dioxins in land-applied sewage sludge, and (3) include receptors with as wide a geographic distribution as possible, avoiding local receptors or those with narrow ecological niches because sewage sludge is land applied throughout the United States. Since adequate data were identified only for mammals and birds, assessment endpoints (i.e., HQs) were quantitatively screened only for these wildlife species populations.

The most significant pathway for vertebrate exposures to dioxins (e.g., mammals, birds, amphibians) is ingestion, and exposure/risk are expressed in terms of ingestion dose. Ingestion risk estimates for terrestrial vertebrates reflect risk to an individual in a species population, and risk to a population of that species is inferred through the selection of endpoints relevant to population viability.

C. What Are the Results of the Screening Ecological Risk Analysis?

Each phase of the SERA was designed to provide insight into the potential for adverse ecological effects. Phase 1 was a high-end bounding analysis, and Phase 2 was a deterministic analysis based on somewhat more representative exposure parameters and somewhat less protective benchmarks. In the Phase 1 analysis, HQ values greater than 1 were calculated, indicating that a more refined analysis was needed.

For the Phase 2 analysis, no HQ values exceeded the target HQ of 1; values range from a minimum of 0.0035 (Canada goose) to a maximum value of 0.36 (short-tailed shrew). The median HQ for the receptors assigned to waterbody margin habitats was 0.015, and the median HQ for receptors assigned to terrestrial habitats was 0.044, indicating that the potential for effects on terrestrial receptors may be somewhat higher than for receptors in waterbody margin habitats. The results of the Phase 2 analysis are summarized below in Table 9.

TABLE 9.—PHASE 2 RESULTS FOR SCREENING ECOLOGICAL RISK ANALYSIS

Species	HQ: Terrestrial habitats	HQ: Waterbody margin habitats
American kestrel	3.5E–02	not assigned.
American robin	1.2E–02	not assigned.
American woodcock	1.8E–01	not assigned.
Bald eagle	not assigned	2.8E–03.
Beaver	not assigned	2.5E–02.
Belted kingfisher	not assigned	9.0E–03.
Black bear	8.1E–02	not assigned.
Canada goose	3.5E–03	not assigned.
Cooper's hawk	2.9E–02	not assigned.
Coyote	2.2E–01	not assigned.
Deer mouse	3.0E–01	not assigned.

TABLE 9.—PHASE 2 RESULTS FOR SCREENING ECOLOGICAL RISK ANALYSIS—Continued

Species	HQ: Terrestrial habitats	HQ: Waterbody margin habitats
Eastern cottontail rabbit	4.4E–02	not assigned.
Great blue heron	not assigned	3.5E–03.
Green heron	not assigned	6.3E–03.
Herring gull	not assigned	8.8E–03.
Least weasel	1.6E–01	not assigned.
Lesser scaup	not assigned	2.1E–02.
Little brown bat	6.2E–02	not assigned.
Long-tailed weasel	2.2E–01	not assigned.
Mallard	not assigned	1.0E–02.
Meadow vole	1.7E–02	not assigned.
Mink	not assigned	2.3E–02.
Muskrat	not assigned	8.1E–02.
Northern bobwhite	1.3E–02	not assigned.
Osprey	not assigned	3.6E–03.
Prairie vole	2.3E–02	not assigned.
Raccoon	4.4E–02	1.3E–01.
Red fox	1.7E–01	not assigned.
Red-tailed hawk	1.9E–02	not assigned.
River otter	not assigned	2.6E–02.
Short-tailed shrew	3.6E–01	not assigned.
Short-tailed weasel	1.8E–01	not assigned.
Tree swallow	2.8E–02	not assigned.
Western meadowlark	1.7E–02	not assigned.
White-tailed deer	6.1E–02	not assigned.

As noted above sewage sludge application to reclaimed lands and silvicultural application of sewage sludge were addressed qualitatively through comparison with agricultural application. In general, reclamation and silviculture applications of sewage sludge are not well characterized. Reclamation applications can consist of spreading sewage sludge on reformed land surfaces as an amendment to support re-vegetation or as fill material deposited in excavations. In the former case, some tilling may occur with landscaping operations; for the latter case, tilling is unlikely. In either case, the dioxins would be expected to bind to soil particles and to display fate and transport behavior similar to that in agricultural fields. While the application rates and frequency are not necessarily comparable, ecological exposures are likely to occur in a manner similar to that for agricultural fields. Terrestrial vertebrates feeding at reclaimed sites would generally be similar to those in an agricultural setting. Receptors and pathways of exposure through aquatic systems would also be expected to be similar to those modeled in the SERA.

For silvicultural application of sewage sludge, EPA assumed that sewage sludge is land-applied once per site. Tilling is less likely to occur except in reforestation projects where site preparation for new plantings could include tilling of sewage sludge into the soil. Many of the avian and mammalian species considered in the agricultural analysis for the field habitat are also expected to feed and forage in forests and, therefore, the screening results for field habitats are considered relevant to the forest habitats. Although there are forest species that are not represented in the agricultural scenario, the major trophic elements are substantially represented. For these reasons, EPA believes that the results of the SERA also provide a useful indicator for the potential for adverse ecological effects at reclamation and silvicultural sites.

Finally, EPA notes the following considerations that should be recognized due to the screening nature of this analysis:

- Because the screening methodology is based on the exceedance of a target HQ of 1, the outcome of the screen is binary: HQ < 1 or HQ ≥ 1. Although large exceedances suggest a greater potential for ecological damage, an HQ of 50 is not necessarily five times worse than an HQ of 10.
- The potential for adverse ecological effects (as indicated by an HQ exceedance) should not be confused with the ecological significance of those effects. Regardless of the magnitude of an HQ exceedance, screening results can only suggest ecological damage; they do not demonstrate actual ecological effects, nor do they indicate whether those effects will have significant implications for ecosystems and their components.
- Ecological receptors for the screening methodology were chosen to represent relatively common species populations. Threatened and endangered species and/or habitats were not included in the analysis because a different type of spatial resolution would have been required (i.e., co-occurrence of threatened and endangered species/habitats with sewage sludge application sites). Consequently, the screening results do not indicate whether endangered species/habitats are at risk.

EPA requests comments on the methodology and data used for the screening ecological risk assessment. The Agency also requests comments on the results derived from the screening ecological risk analysis summarized above.

IX. How Might the New Data and Revised Risk Assessment Affect EPA's Proposed Dioxin Concentration Limit for Land-Applied Sewage Sludge and the Proposed Monitoring Requirements?

A. Possible Implications for Proposed Concentration Limit for Land-Applied Sewage Sludge

As indicated above, the revised risk assessment (probabilistic) for land application of sewage sludge estimates that the high-end individual excess lifetime risk to the highly exposed modeled population using the current cancer slope factor could range from 2×10^{-5} to 1×10^{-6} (''two in one-hundred thousand'' to ''one in one million'') for exposure by multiple pathways. Use of the cancer slope factor being considered in the 2000 Draft Dioxin Reassessment would result in

estimated high-end multi-pathway lifetime cancer risks ranging from 1.2×10^{-4} to 6×10^{-6} for this same highly exposed modeled population. By comparison, the risk assessment for the December 1999 proposal (which used a deterministic methodology and a number of different assumptions; see Section VI.D. of this Notice), estimated a high-end cancer risk of 1.7×10^{-5} (USEPA, 1999b). As noted in the December 1999 proposal, the Agency considers risks in the range of 1×10^{-6} to 1×10^{-4} (''one in one million'' to ''one in ten thousand'') to be acceptable levels of risk. The revised high-end risk estimates continue to fall within this range of acceptable risks. The revised risk assessment also shows no measurable change in risk from requiring all sewage sludge to meet a 300 ppt TEQ limit.

B. Effect on Proposed Monitoring Requirements

In the December 1999 proposal, the Agency proposed two alternative monitoring schedules based on the level of dioxins in sewage sludge to be land applied. Specifically, treatment works and other sewage sludge preparers that measure the level of dioxin in their sewage sludge to be between 300 ppt TEQ and 30 ppt TEQ would be required to monitor annually. Treatment works and sewage sludge preparers that measure dioxin levels of 30 ppt TEQ or less for two consecutive years would be required to monitor every five years thereafter. The proposed monitoring schedule was based on the Agency's assumption that the level of dioxins in sewage sludge, both nationally and from specific sources, is relatively constant over time and may be decreasing. The Agency noted that since the concentration of 30 ppt TEQ which would allow less frequent monitoring is a full order of magnitude less than the proposed numeric standard of 300 ppt TEQ (i.e., one-tenth), the chances that such a sewage sludge would exceed the limit are small. Furthermore, the Agency noted that any health risks associated with dioxin exposure from land application of sewage sludge at these levels would require long-term exposure (i.e., significantly greater than five years) to potentially present unreasonable health risks.

As noted in Section V.H. of this Notice, the EPA 2001 dioxin update survey indicates that dioxin levels in sewage sludge appear to have decreased from 1988 to 2001. The new data also indicate that for most POTWs, dioxin levels appear to not fluctuate greatly over time. However, the sewage sludge samples which had the highest levels of dioxins in either the 1988 NSSS or 2001 EPA update survey appeared to evidence greater fluctuations in dioxin concentrations than the other sewage sludges. As also previously noted, the data for facilities where monthly data were available indicate that dioxin concentrations tend to corroborate these observations from the EPA 2001 dioxin update survey. The data for the facilities where monthly data were available indicate that the dioxin concentrations are relatively consistent over time on a month-to-month basis, but the variability appeared the greatest for the facility with the highest dioxin concentrations measured in its sewage sludge (see Section V.K.).

The Agency continues to believe that if it sets a dioxin limit of 300 ppt TEQ, this two-tier monitoring schedule in line with the December 1999 proposal may be appropriate. For facilities where longer term monitoring data was available, the maximum monthly concentration of dioxin was within a factor of two to four times the average concentration for that facility. By comparison, the proposed monitoring schedule would allow reduced monitoring frequency only when two consecutive measurements were a factor of ten less than the specified limit. Furthermore, no POTWs in the EPA 2001 dioxin update survey had consistently high levels of dioxins in their sewage sludge; and the revised risk assessment predicts that even long term exposure to dioxins in land-applied sewage sludge would result in negligible increases in risk.

Based on the data from the EPA 2001 dioxin update survey, approximately 31 percent of POTWs produce sewage sludge with dioxin levels between 30 ppt TEQ and 300 ppt TEQ (USEPA, 2002a). These POTWs would be required to monitor annually for dioxin under the proposed monitoring schedule if their sewage sludge is land applied. (By comparison, approximately 61 percent of POTWs previously were estimated to produce sewage sludge with dioxin levels between 30 ppt TEQ and 300 ppt TEQ based on the data available to EPA at the time of the December 1999 proposal (USEPA, 1999d).)

The costs associated with monitoring for dioxin annually at facilities with sewage sludge concentrations between 30 ppt TEQ and 300 ppt TEQ previously was estimated to be $1,224,000 based on the sewage sludge dioxin data available to EPA at the time of the December 1999 proposal (USEPA, 1999d). EPA now estimates the costs associated with monitoring for dioxin annually at facilities with sewage sludge dioxin concentrations between 30 ppt TEQ and 300 ppt TEQ would be approximately $656,000 (USEPA, 2002d).

Based on the new data, EPA is considering whether alternatives to the proposed monitoring scheme would be more appropriate. Because the data continue to show periodic ''spikes,'' and the data indicates that these higher levels of dioxin may not remain for long periods of time, a different monitoring schedule may be indicated. Similarly, the data indicates that sewage sludge with lower levels of dioxins may not fluctuate as greatly, which may indicate a different threshold or monitoring frequency than those proposed. For example, monitoring every two years rather than annually; or at some other interval may be more appropriate.

The percentage of land-applied sewage sludge which would have to be monitored annually would be reduced if the threshold for annual dioxin monitoring was set at a higher concentration than 30 ppt TEQ. Likewise, the percentage of land-applied sewage sludge which would have to be monitored annually would be greater if the threshold for annual dioxin monitoring was set at a lower concentration than 30 ppt TEQ. As an example, 13 percent of POTWs produce sewage sludge between 50 ppt TEQ and 300 ppt TEQ based on data from the EPA 2001 dioxin update survey (USEPA, 2002a). This compares to 31 percent of POTWs with sewage sludge dioxin concentrations between 30 ppt TEQ and 300 ppt TEQ, as noted above.

The Agency requests comments on the proposed monitoring schedule and the threshold concentration of dioxin that would allow for more or less frequent monitoring. Specifically, EPA requests comments on whether other schedules which would require more or less frequent monitoring would be more appropriate. EPA also requests comment on whether a monitoring requirement in lieu of a numeric limit should be considered.

X. How Might the New Data and Revised Risk Assessment Affect EPA's Proposal for Small Entities?

EPA proposed to exclude from the proposed land application requirements relating to dioxins, sewage treatment works with a wastewater flow of *one* MGD or less and sewage sludge-only entities which prepare 290 dry metric tons or less of sewage sludge annually for land application. (EPA estimates that a one MGD treatment works produces approximately 290 dry metric tons of sewage sludge annually.) Sewage sludge from these small preparers would be excluded from the limitation on dioxins

in sewage sludge. Such preparers could continue to land apply their sewage sludge with no further restriction due to the sewage sludge's dioxin content.

The December 1999 proposal indicated that EPA believes that this exclusion is appropriate for several reasons. First, less than eight percent of the total sewage sludge that is land applied is produced by sewage treatment works with flow rates of one MGD or less (USEPA, 1990). Second, the probability that this small amount of sewage sludge (i.e., 42 dry metric tons per facility annually, which is the average amount of sewage sludge produced by POTWs less than one MGD) could unreasonably increase health risks for any individual is extremely small. EPA specifically requested comment on the Agency's proposal to exclude small preparers from any requirements relating to dioxins in sewage sludge to be land applied.

The new data that EPA collected on the levels of dioxins found in sewage sludge (USEPA, 2002a) and the revised land application risk assessment (USEPA, 2002b), provide additional information which the Agency believes supports the proposal to exclude sewage treatment works with a wastewater flow of one MGD or less and sewage sludge-only entities which prepare 290 dry metric tons or less of sewage sludge annually for land application.

The levels of dioxins in sewage sludge from treatment works with a wastewater flow of one MGD or less was measurably less than the levels of dioxins in sewage sludge from facilities with a wastewater flow greater than one MGD (USEPA, 2002a). The highest observed level of dioxins from treatment works with a wastewater flow of one MGD or less was 78.6 ppt TEQ. This compares to the highest observed value of 718 ppt TEQ for dioxins for facilities with a wastewater flow greater than one MGD. The average (mean) and 95th percentile values dioxins for treatment works with a wastewater flow of one MGD or less also were measurably less compared to treatment works with flows greater than one MGD: 26.5 ppt TEQ and 67.1 ppt TEQ, respectively for treatment works with a wastewater flow of one MGD or less compared to 44.1 ppt TEQ and 94.8 ppt TEQ, respectively for treatment works with a wastewater flow greater than one MGD.

The revised risk assessment methodology does not allow EPA to make a separate risk estimate for treatment works with wastewater flows of one MGD or less because, other than the dioxin levels in sewage sludge discussed above, there are no relevant factors considered in the risk assessment which vary specifically based on the capacity of the treatment works . However, the Agency believes the revised risk assessment provides further indication that the minimal amounts of sewage sludge from treatment works with wastewater flows of one MGD or less would be very unlikely to produce an unreasonable increase in health risks for any individual.

The revised risk assessment estimates that the high-end incremental adult lifetime risk for highly exposed farm families associated with dioxins in land-applied sewage sludge ranges from 4 x 10^{-5} at the 99th percentile to 1 x 10^{-6} at the 50th percentile, which equates to less than 0.006 cancer cases annually. The key variable in this risk estimate that can be related to treatment facility size is the distribution of farm sizes to which the sewage sludge is land-applied. The revised risk assessment used a distribution of median farm sizes for 41 meteorologic regions ranging from 24.2 acres to 1241.7 acres (USDA, 1997). For this distribution, the average farm size is 487 acres and the median farm sizes is 120 acres. By comparison, the average amount of sewage sludge produced by a treatment works with a wastewater flow of one MGD or less (i.e., 42 dry metric tons annually) would be applied to approximately 10 acres of farmland when applied at agronomic rates (i.e., 4 metric tons per acre annually). Thus, the acreage impacted by treatment works with a wastewater flows of one MGD is significantly less than that which would result in an estimated risk of 1 x 10^{-6}. On this basis, EPA believes that the amount of sewage sludge produced by treatment works with a wastewater flow of one MGD or less is not sufficient to result in an unreasonable risk to potentially exposed populations. Again, EPA specifically invites comment on the Agency's proposal to exclude small entities from any limit for dioxins in sewage sludge to be land applied.

XI. How Does the New Data and Revised Risk Assessment Affect EPA's Cost Estimates?

As noted in the December 1999 proposal, the increased costs which would be imposed by the proposed regulation are the costs for initially monitoring for dioxins by all land-applying treatment works greater than one MGD, annual monitoring at those facilities with dioxin levels between 30 ppt TEQ and 300 ppt TEQ, and switching to co-disposal with municipal solid waste for current land appliers whose sewage sludge contains over 300 ppt TEQ of dioxins. The Agency assumed that the cost of measuring dioxins in sewage sludge is $2,000 per sample and the cost to switch to co-disposal with municipal solid waste was $189 per dry metric ton in 1998 dollars. For the proposal, EPA estimated that the annualized cost of this regulation nationwide would be approximately $18 million. Of this amount, 13 percent was for monitoring, and the balance is for switching use or disposal practices (USEPA, 1999d).

EPA has updated these cost estimates (USEPA 2002d). The Agency assumes that the cost to switch to co-disposal with municipal solid waste has risen to $197 per dry metric ton in year 2000 and that the cost of measuring dioxins in sewage sludge remains at $2,000 per sample. On this basis, EPA now estimates that the annualized cost of this regulation Nationwide would be approximately $4.5 million if the dioxin limit for land application of sewage sludge is 300 ppt TEQ. The decrease in the estimated cost results from the smaller percentage of sewage sludge that would exceed a 300 ppt TEQ dioxin limit based on the data from the EPA 2001 dioxin update survey (i.e., 1% vs. 5%). The estimated benefits of a 300 ppt limit would be very low, since such a limit would not likely produce a detectable change in lifetime cancer risk, even to highly exposed farm families and using conservative assumptions, and no species in the SERA has a HQ above 1, even in the baseline with no limits.

XII. Identification and Control of Dioxin Sources that Contribute to Elevated Dioxin Levels in Sewage Sludge.

Both the EPA 2001 dioxin update survey and the 2001 AMSA Survey found a small percentage of sewage sludge samples with dioxin concentrations which were significantly higher than most of the other the sewage sludge samples in the survey. The EPA 2001 dioxin update survey found only 1 percent of the samples with a dioxin concentration greater than 100 ppt TEQ (compared to an average (mean) of 31.6 ppt TEQ). The AMSA 2001 survey found less than 5 percent of the samples analyzed in their survey with a dioxin concentration greater than 100 ppt TEQ (compared to an average (mean) of 48.6 ppt TEQ.)

Even though relatively few sewage sludge samples have elevated concentrations of dioxins, those that do can have levels which are much higher than the values typically observed. The highest dioxin concentration measured in the 2001 EPA and AMSA surveys were 718 ppt TEQ and 3,590 ppt TEQ,

respectively. In addition, as discussed previously in this Section of today's notice, higher levels of dioxins in sewage sludge appear to be transient and may not be consistently identified. While the revised risk assessment shows no measurable change in the risk from eliminating these spikes to individuals exposed through land application of sewage sludge, the Agency believes it may be beneficial to develop a procedure to identify the sources contributing to higher levels of dioxins in sewage sludges. Relatively high levels of dioxin in sewage sludge may be an indication of sources in the treatment works' service area with even higher levels of dioxins.

The Agency is requesting comments on a methodology to assist communities in identifying sources of elevated dioxins in their sewage sludge. This methodology relies on two complementary elements to identify sources of dioxin: (1) Identification of sources known to be generators or sinks for dioxin (e.g., specific chemical manufacturing operations, combustion sources or contaminated landfills); and (2) comparison of the mix of the 29 dioxin congeners measured in a particular sewage sludge sample to the ''fingerprint'' of 29 dioxin congeners for known sources of dioxins. The methodology would be used by communities to reduce levels of dioxins in their sewage sludge by eliminating these sources of dioxins from the collection system or remediating contaminated sites.

The first element of this methodology is identification of local industrial, commercial and other sources with inputs to municipal sanitary sewers which have a potential to contain significant levels of dioxins. The primary database used to make these identifications would be the Agency's updated 2001–2002 Toxics Release Inventory. The Toxics Release Inventory is a valuable source of nationwide information regarding toxic chemicals that are being used, manufactured, treated, transported or released into the environment. Toxics Release Inventory data includes the local discharges of chemicals to sanitary sewers by industrial and commercial establishments. Other potential local sources of dioxins in sewage sludge include leachate from landfills, contaminated manufacturing and disposal sites, and scrubber water from combustion operations.

Identification of possible sources of dioxins in sewage sludge also will be aided by reviewing data available from local pretreatment programs and the results of detailed studies conducted in any communities which have attempted to identify sources of dioxins in their sewage sludge. Industry listings for local pretreatment programs will be reviewed to determine which are likely sources of elevated dioxins in sewage sludge. With respect to community-specific studies, EPA has received information which indicates that elevated concentrations of dioxins in the sewage sludge may be due to non-point source contamination. Non-point source contamination comes from erodible soils that contain elevated levels of dioxins and periodically enter either sanitary sewers as a result of infiltration during precipitation, or combined sewers through normal stormwater flows.

The second element of a methodology to identify sources which contribute to elevated dioxins in sewage sludge is to compare the mix of dioxin congeners in a particular sewage sludge to the mix of dioxin congeners in known sources of dioxins. Mixtures of the 29 congeners of dioxins have distinct patterns (profiles or ''fingerprints'') of relative proportions for each of the congener classes (i.e., dioxins, dibenzofurans and coplanar PCBs) depending on the source of dioxins. For example, dioxins produced by combustion have a different ''fingerprint'' than dioxins produced by chemical processes such as pulp and paper mill bleaching with chlorine or pentachlorophenol manufacturing. By examining these congener ''fingerprints'', it is possible to identify likely manufacturing, chemical or combustion processes that produced that particular profile. Dioxin congener profiles from the sewage sludge samples with elevated dioxin concentrations from the 2001 EPA and AMSA surveys will be compared against known dioxin profiles of samples from various manufacturing, chemical and combustion and chemical processes. These comparisons can be used in the source identification portion of the methodology described above.

EPA is inviting comments on this overall methodology to identify and reduce or eliminate sources of dioxins entering wastewater treatment plants that contribute to elevated levels of dioxins in sewage sludge. In particular, comments are invited on the two phase approach to identify these sources described above. Note that EPA is not proposing use of this methodology in a regulatory context, but rather developing it as a tool for use by POTWs and/or communities on a voluntary basis.

XIII. Request for Public Comments

While EPA is requesting comments on all of the information discussed in this Notice, the Agency hopes that public comments will also focus specifically on the following aspects of this Notice:

(1) The significance of the differences in dioxin concentrations in sewage sludge measured at facilities with wastewater flows greater than one MGD compared to dioxin concentrations in sewage sludge at facilities with wastewater flows less than one MGD (V.G.).

(2) The significance of the differences in dioxin concentrations in sewage sludge measured in the EPA 2001 dioxin update survey compared to dioxin concentrations in sewage sludge measured in the 1988 NSSS (V.H.).

(3) Choice of the highly exposed farm family as the modeled population for the revised risk assessment and the assumptions related to this choice of modeled population. (VI.D.).

(4) All of the assumptions related to exposure, fate and transport used in the revised risk assessment , including the specific assumptions related to the farming and grazing practices used by the modeled farm family (VI.D.),

(5) The treatment of non-detects in the revised risk assessment and the effect on estimating risk (VI.E.).

(6) The assumptions and values used to estimate how much dioxins are being transported to individuals in the modeled farm family (*e.g.,* the sources [store-bought versus farm-produced], types and dioxin contamination levels of poultry feeds.) (VI.F.)

(7) The methodology and data used for the screening ecological risk assessment (VIII.A. and VIII.B); and the results derived from the screening ecological risk analysis (VIII.C.).

(8) The significance of the finding that setting a 300 ppt TEQ limit would make no detectable difference in the risk of cancer to the highly exposed farm family.

(9) Taking no action with respect to regulating dioxins for land application (IX.).

(10) The proposed monitoring schedule and the threshold concentration of dioxin that would allow for less frequent monitoring, and specifically, on whether other schedules which would require more or less frequent monitoring would be more appropriate (IX.).

(11) Excluding small entities from the limit for dioxins in sewage sludge to be land applied (X.).

(12) A methodology to assist communities in voluntarily identifying and reducing or eliminating sources of dioxins entering wastewater treatment plants that contribute to elevated levels of dioxins in sewage sludge (XII.).

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Dated: June 5, 2002.

G. Tracy Mehan III,

Assistant Administrator for Water.

[FR Doc. 02–14761 Filed 6–11–02; 8:45 am]

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Federal Register

Wednesday,
June 12, 2002

Part VII

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7229–4]

RIN 2060–AE44

National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: The EPA received adverse comment on the direct final action published on December 17, 2001 (66 FR 65072) to amend the national emission standards for hazardous air pollutants from phosphoric acid manufacturing plants and phosphate fertilizers production plants. We stated in that direct final action that, if we received adverse comment by January 16, 2002, we would publish a timely withdrawal in the **Federal Register**. We, however, did not publish the withdrawal prior to the February 15, 2002 effective date of the direct final rule as we did not receive the comment until February 12, 2002. (As explained further below, the comment was dated within the time period specified for submitting comments, and we assume that our late receipt of the comment resulted from problems with mail delivery in the Washington, DC area in the aftermath of the events of September 11, 2001.) In this action, we are removing one of the amendments (an emission limit) that was published in the December 17, 2001 direct final rule for phosphoric acid manufacturing plants and reinstating the corresponding emission limit in existence prior to the effective date of the direct final rule. We will address the adverse comment in a subsequent final action based on the parallel proposal also published on December 17, 2001. Notice of that final action should be published in the **Federal Register** in the very near future.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without notice and comment procedures because under the terms of the December 17, 2001 direct final action, this amendment to the national emission standards for phosphoric acid manufacturing plants should not have occurred. Thus, notice and comment are contrary to the public interest and unnecessary. We find that the circumstances described constitute good cause under 5 U.S.C. 553(b)(3)(B) and 553(d)(3) which authorizes an agency to make a rule immediately effective where it finds that there is good cause for doing so.

EFFECTIVE DATE: June 12, 2002.

ADDRESSES: Docket No. A–94–02, containing information relevant to the direct final action being withdrawn, is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for legal holidays) at the following address: Air and Radiation Docket and Information Center (6102), U.S. EPA, 401 M Street, SW., Room M–1500, Waterside Mall (ground floor), Washington, DC 20460 or by phoning the Air Docket Office at (202) 260–7548. Refer to Docket No. A–94–02. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tanya Medley, Environmental Protection Agency, Office of Air Quality Planning and Standards, at (919) 541–5422, e-mail: medley.tanya@epa.gov, facsimile (919) 541–5600.

SUPPLEMENTARY INFORMATION: On June 10, 1999 (64 FR 31358), we published the final national emission standards for hazardous air pollutants (NESHAP) for phosphoric acid manufacturing plants (40 CFR 63, subpart AA) and the NESHAP for phosphate fertilizers production plants (40 CFR 63, subpart BB). Subsequent to that publication, The Fertilizer Institute (TFI) filed a petition with the United States Court of Appeals for the District of Columbia Circuit challenging several aspects of the NESHAP for phosphoric acid manufacturing plants and phosphate fertilizers production plants.

The EPA entered into discussions with TFI on their issues and reached a Settlement Agreement on June 26, 2001. The NESHAP for phosphoric acid manufacturing plants and phosphate fertilizers production plants were subsequently amended to clarify our intent regarding the daily averaging of monitored operating parameters of air pollution control devices and the establishment of baseline average values for the monitored parameters; and to revise the particulate matter emission limit for phosphate rock calciners subject to the NESHAP for phosphoric acid manufacturing plants.

These amendments were accomplished through a direct final action (66 FR 65072) and a parallel proposal (66 FR 65079) published in the **Federal Register** on December 17, 2001.

We stated in the direct final action that if we received adverse comment by January 16, 2002, we would publish a withdrawal in the **Federal Register** that this direct final rule will not take effect. We received one adverse comment that addressed only the revised emission limit for particulate matter emissions from phosphate rock calciners that are subject to the NESHAP for phosphoric acid manufacturing plants. This comment letter was dated January 11, 2002, but EPA's Air Docket marked the letter as being received on February 12, 2002. For purposes of today's action, we assume that the comment was received after the official close of the comment period due to continuing delays in U.S. mail delivery to all EPA offices in Washington DC, including EPA's Air Docket, due to concerns about possible contamination. As a result, we are rescinding the change to the emission limit in 40 CFR 63.602 (d) established by the direct final rule and reinstating the emission limit in existence prior to the effective date of the direct final rule. That will give us an opportunity to further evaluate the merits of the comment and respond to it in the context of final action on the parallel proposal that was published along with the direct final rule.

Because we received an adverse comment on one of the amendments to the NESHAP for phosphoric acid manufacturing plants, the direct final rule effecting that amendment, by its terms, should not have become effective. We, therefore, are hereby removing that amendment in today's action, and reinstating the corresponding provision previously in existence.

This removal action is simply a ministerial correction of one provision (i.e. the revised emission limit for particulate emissions from phosphate rock calciners) in the prior direct final rulemaking, which by its terms should not have become effective because a party commented adversely on this amendment to the NESHAP for phosphoric acid manufacturing plants. Therefore, we are invoking the good cause exception under the APA, 5 U.S.C. 553(b)(3)(B) because we believe that notice-and-comment rulemaking of this removal action is contrary to the public interest and unnecessary. This removal action merely restores the regulatory text for the cited provision that existed prior to the direct final rule. We stated in the December 17, 2001

direct final action that should adverse comment be received, the rule would not take effect. The rule took effect because we did not publish a timely withdrawal in the **Federal Register** prior to the rule's effective date due to our late receipt of the adverse comment. It would be contrary to the public interest to keep the cited provision of the direct final rule in effect when it should not have taken effect in the first instance due to our receipt of an adverse comment.

Additionally, further notice-and-comment on this action is unnecessary because we are merely restoring the regulatory text of the provision as it existed prior to the amendment. We, therefore, find that there is good cause for making this action final without opportunity for notice and comment.

For the reasons described in the preceding paragraph, we find there is good cause, in accordance with the APA, 5 U.S.C. 553(d)(3), for the removal of the amended emission limit and reinstatement of the preexisting emission limit to become effective upon publication.

We will address the single public comment in a subsequent final action on the parallel proposed rule amendment.

Administrative Requirements

Under Executive Order 12866, Regulatory Planning and Review, (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, does not apply to this action. Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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 EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a significant regulatory action under Executive Order 12866. This rule does not have any federalism implications under Executive Order 13132, Federalism. The Paper Reduction Act, and the National Technology Transfer and Advancement Act do not apply here. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 12, 2002. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended to read 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. Section 63.602 is amended by revising paragraph (d) to read as follows:

§ 63.602 Standards for existing sources.

* * * * *

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1810 gram per dry standard cubic meter (g/dscm)(0.060 grains per dry standard cubic foot (gr/dscf)).

* * * * *

[FR Doc. 02–14757 Filed 6–11–02; 8:45 am]

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648 39329
660 ....38245, 39330

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 12, 2002

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
- Administrative changes and technical amendments; published 3-14-02

Air pollutants, hazardous; national emission standards:
- Phosphoric acid manufacturing and phosphate fertilizers production plants; published 6-12-02
- Primary copper smelting; published 6-12-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Carboxin; published 6-12-02
- Carfentrazone-ethyl; published 6-12-02
- Spinosad; published 6-12-02
- Triflumizole; published 6-12-02
- Triflusulfuron methyl; published 6-12-02

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:
- Records disposition procedures; simplification; published 5-13-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bombardier; published 5-28-02
- CFE Co.; published 5-8-02

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Domestic reverse hybrid entities; treaty guidance regarding payments; published 6-12-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Texas (splenetic) fever in cattle—
  - State and area classifications; comments due by 6-17-02; published 4-16-02 [FR 02-09209]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Overtime services relating to imports and exports:
- Fee increases; comments due by 6-21-02; published 4-22-02 [FR 02-09827]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Sea turtle conservation—
  - Mid-Atlantic Exclusive Economic Zone; closure to large-mesh gillnet fishing; comments due by 6-19-02; published 3-21-02 [FR 02-06772]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aluetian Islands groundfish and Gulf of Alaska groundfish; Steller sea lion protection measures; comments due by 6-17-02; published 5-16-02 [FR 02-12278]
- Gulf of Mexico stone crab; comments due by 6-17-02; published 4-18-02 [FR 02-09520]
- Magunuson-Stevens Act provisions—
  - Domestic fishing; general provisions; comments due by 6-17-02; published 4-18-02 [FR 02-09462]
- West Coast States and Western Pacific fisheries—
  - Western Pacific pelagics; comments due by 6-20-02; published 5-6-02 [FR 02-11026]

COMMERCE DEPARTMENT

Patent and Trademark Office

Trademarks:
- Paper forms use for submission of registration applications and other documents; processing fee; comments due by 6-17-02; published 5-17-02 [FR 02-12156]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Foster Grandparent Program; amendments; comments due by 6-17-02; published 4-17-02 [FR 02-09200]

Senior Companion Program; amendments; comments due by 6-17-02; published 4-17-02 [FR 02-09199]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - Deductibles waiver and prime enrollment period clarification; comments due by 6-17-02; published 4-18-02 [FR 02-09244]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Generator interconnection agreements and procedures; standardization; comments due by 6-17-02; published 5-2-02 [FR 02-10663]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- State operating permits programs—
  - Indiana; comments due by 6-17-02; published 5-16-02 [FR 02-12281]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- State operating permits programs—
  - Indiana; comments due by 6-17-02; published 5-16-02 [FR 02-12282]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-19-02; published 5-20-02 [FR 02-12410]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-19-02; published 5-20-02 [FR 02-12411]
- Louisiana; comments due by 6-19-02; published 5-20-02 [FR 02-12616]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Maine; comments due by 6-19-02; published 5-20-02 [FR 02-12469]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Maine; comments due by 6-19-02; published 5-20-02 [FR 02-12470]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Minnesota; comments due by 6-19-02; published 5-20-02 [FR 02-12414]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Minnesota; comments due by 6-19-02; published 5-20-02 [FR 02-12415]
- Utah; comments due by 6-19-02; published 5-20-02 [FR 02-12412]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Utah; comments due by 6-19-02; published 5-20-02 [FR 02-12413]

ENVIRONMENTAL PROTECTION AGENCY

Radiation protection programs:
- Rocky Flats Environmental Technology Site—
  - Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 6-19-02; published 5-20-02 [FR 02-12684]

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due

by 6-17-02; published 5-16-02 [FR 02-12145]
Water supply:
National primary drinking water regulations—
Agency review results; comments due by 6-17-02; published 4-17-02 [FR 02-09154]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
California; comments due by 6-17-02; published 4-29-02 [FR 02-10479]
Michigan; comments due by 6-17-02; published 4-29-02 [FR 02-10478]
Pennsylvania; comments due by 6-17-02; published 4-29-02 [FR 02-10476]
Vermont; comments due by 6-17-02; published 4-29-02 [FR 02-10477]
Television broadcasting:
Cable modem service; high-speed Internet; broadband access over cable and other facilities; appropriate regulatory treatment; comments due by 6-17-02; published 4-17-02 [FR 02-09102]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:
Administrative errors correction, expanded and continuing eligibility, death benefits, and loan program—
Uniformed Services Employment and Reemployment Rights regulations, etc.; comments due by 6-17-02; published 5-17-02 [FR 02-12344]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Color additives:
Sodium copper chlorophyllin; comments due by 6-19-02; published 5-20-02 [FR 02-12544]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Florida manatee; protection areas; comments due by 6-17-02; published 4-16-02 [FR 02-09224]
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc.
Meetings; comments due by 6-21-02; published 6-11-02 [FR 02-14664]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Illinois; comments due by 6-17-02; published 5-17-02 [FR 02-12463]
Kentucky; comments due by 6-20-02; published 6-5-02 [FR 02-14077]
Utah; comments due by 6-17-02; published 5-17-02 [FR 02-12459]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Immigration detainees in non-Federal facilities; public disclosure of information; comments due by 6-21-02; published 4-22-02 [FR 02-09863]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Nonimmigrant classes:
Student and Exchange Visitor Information System; F, J, and M nonimmigrants; information retention and reporting; comments due by 6-17-02; published 5-16-02 [FR 02-12022]
Correction; comments due by 6-17-02; published 5-24-02 [FR C2-12022]

PERSONNEL MANAGEMENT OFFICE

Pay administration:
Premium pay limitations; comments due by 6-18-02; published 4-19-02 [FR 02-09537]

POSTAL RATE COMMISSION

Practice and procedure:
Electronic filing of documents over Internet; comments due by 6-21-02; published 5-21-02 [FR 02-12644]

SMALL BUSINESS ADMINISTRATION

New Markets Venture Capital Program:
Miscellaneous amendments; comments due by 6-19-02; published 5-20-02 [FR 02-12198]
Small business investment companies:
Small business concern, control; sale of equity securities in portfolio concern to competitor of that portfolio concern; comments due by 6-17-02; published 5-17-02 [FR 02-12466]
Small business size standards:
Nonmanufacturer rule; waivers—
Small arms ammunition manufacturing; comments due by 6-19-02; published 6-7-02 [FR 02-14246]

SOCIAL SECURITY ADMINISTRATION

Social security benefits:
Hematological disorders and malignant neoplastic diseases; medical criteria evaluation; comments due by 6-17-02; published 4-18-02 [FR 02-09468]

STATE DEPARTMENT

Visas; nonimmigrant documentation:
INTELSAT; addition as international organization
Clarification of status of organization and personnel affected; comments due by 6-17-02; published 4-17-02 [FR 02-08549]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Minnesota; comments due by 6-17-02; published 4-16-02 [FR 02-09108]
Ports and waterways safety:
Chicago Captain of Port Zone, Lake Michigan, IL; security zones; comments due by 6-21-02; published 5-22-02 [FR 02-12734]
Manchester Bay, MA; safety zone; comments due by 6-17-02; published 5-17-02 [FR 02-12421]
Milwaukee Captain of Port Zone, WI; safety zones; comments due by 6-17-02; published 4-18-02 [FR 02-09417]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Bell; comments due by 6-17-02; published 4-17-02 [FR 02-09173]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; comments due by 6-17-02; published 4-18-02 [FR 02-09390]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Bombardier; comments due by 6-19-02; published 5-20-02 [FR 02-12518]
Diamond Aircraft Industries GmbH; comments due by 6-17-02; published 5-20-02 [FR 02-12519]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Enstrom Helicopter Corp.; comments due by 6-17-02; published 4-17-02 [FR 02-09144]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Glaser-Dirks Flugzeugbau GmbH; comments due by 6-17-02; published 5-20-02 [FR 02-12520]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Gulfstream; comments due by 6-21-02; published 5-22-02 [FR 02-12516]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Rolls-Royce plc; comments due by 6-17-02; published 4-18-02 [FR 02-09394]

TRANSPORTATION DEPARTMENT

Maritime Administration

Vessel documentation:
Fishery endorsement; U.S.-flag vessels of 100 feet or greater in registered length; comments due by 6-17-02; published 4-16-02 [FR 02-09005]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 3167/P.L. 107–187

Gerald B. H. Solomon Freedom Consolidation Act of 2002 (June 10, 2002; 116 Stat. 590)

Last List June 03, 2002

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